IN THE QUEEN'S BENCH,

MANITOBA.

The Manitoba South-Western Colonization Railway Company and others—

AGAINST

DOCTOR SCHULTZ AND OTHERS.

BILL OF COMPLAINT

AND

JUDGMENT

IN FULL OF

CHIEF JUSTICE WOOD

IN PRONOUNCING THE JUDGMENT OF THE COURT,

Granting, on motion and notice to the defendants, order for interlocutory

INJUNCTION

IN TERMS OF THE PRAYER OF THE BILL OF COMPLAINT.

WINNIPEG, MANITOBA:
MANITOBA FREE PRESS STEAM PRINT.

1882

IN THE COURT OF QUEEN'S BENCH.

IN EQUITY.

BETWEEN

THE MANITOBA SOUTH-WESTERN COLONIZATION RAILWAY COMPANY, GEORGE H. ADAMS, ARTEMUS H. HOLMES, THOMAS F. OAKES, ANTHONY J. THOMAS, HUGH SUTHERLAND, JAMES H. ASHDOWN, JOHN H. HAMMOND, GEORGE M. CUMMING, GEORGE BROWN, CHARLES V. MEAD, JAMES R. SUTHERLAND, ROBERT E. O'BRIEN AND WILLIAM P. CLOUGH.

PLAINTIFFS,

AND

W. R. BOWN, JOHN C. SCHULTZ, E. A. C. PEW, W. N. KENNEDY, WILLIAM MURDOCH, R. L. McGREGOR, R. R. McLENNAN, D. H. McMILLAN, T. C. SCOBLE, L. O. ARMSTRONG AND STEWART MULVEY.

DEFENDANTS.

The Bill sets forth:—

(1.) The Manitoba South-Western Colonization Railway Company, is a corporation, organized and existing under that certain Act of Parliament of Canada, passed in the forty-second year of the reign of Her Majesty, entitled "*An Act to incorporate the Manitoba, South-Western Colonization Railway Company,*" and also under the further Act of the said Parliament, passed in the forty-third year of the reign of Her Majesty, intituled, "*An Act to extend the powers of the Manitoba South-Western Colonization Railway Company, and to further amend the Act incorporating the said Company.*"

(2) In and by the Act first mentioned, it is amongst other things provided and enacted.

"*Sec.* (*1*) Wm. Hendrie, of Hamilton, capitalist, Duncan McArthur, of Winnipeg, banker, W. W. Ogilvie, of Montreal, capitalist, J. H. Ashdown, of Winnipeg, merchant, Frederick Fairman, of Montreal, merchant, W. H. Lyon, of Winnipeg, merchant, Joseph Whitehead, of Winnipeg, contractor, Samuel C. Biggs, of Winnipeg, barrister, James Cooper, of Winnipeg, merchant, A. H. Bertrand, of Winnipeg, merchant, Walter R. Bown, of Winnipeg, merchant, George Leamy, of Pembina Mountain, farmer, Henry Hackett, of Winnipeg, shipper, Robert McGregor, of Winnipeg, merchant, and David Young, of Winnipeg, merchant, together with all such persons and corporations as shall become shareholders in the company hereby incorporated, shall be and are hereby constituted a body corporate and politic, by and under the name of the "Manitoba South Western Colonization Railway Company."

"*Sec.* (*2*) The said Company shall have full power and authority to lay out, construct and complete a double or single track railway, of four feet, eight and one-half inches in width of guage, from the city of Winnipeg, to some point near the western boundary of the Province of Manitoba, at or near Rock Lake, and to construct, own and operate lines of telegraph along the line of such railway, and to construct bridges across the Red and Assiniboine rivers, and to connect with the Pembina Branch of the Canadian Pacific Railway at or near St. Boniface; but the said company shall not commence the construction of the said railway or any work thereunto appertaining, until the location of the said railway shall have been approved of by the Governor in Council."

"*Sec.* (*6*) The persons named in the first section of this Act, with power to add to their number, shall be and are hereby constituted provisional directors of the said company, of whom five shall be a quorum, and shall hold office as such until the first election of directors under this Act, and shall have power forthwith to open stock-books and procure subscriptions of stock for the undertaking, giving at least four weeks' previous notice by advertisement in the *Canada Gazette*, of the time and place of their meeting to receive such subscriptions of stock; and they shall have power to receive payments on account of stock so subscribed, and to cause plans and surveys to be made, and to acquire any plans and surveys now existing, and to deposit in any chartered bank of Canada all moneys received by them, on account of stock subscribed and to withdraw the same solely for the purposes of the undertaking and to receive on behalf of the company any grant, loan, bonus, or gift made to it, in aid of the undertaking, and to enter into any agreement respecting the conditions or disposition of any gift or bonus in aid of the railway.

"*Sec.* (*7*) The capital stock of the company shall be one million dollars (with power to increase the same in manner provided by '*The Railway Act, 1868,*') to be divided into shares of one hundred dollars each, and the money so raised shall be applied in the first place to the payment of all fees, expenses and disbursements for procuring the passing of this Act and for making the surveys, plans and estimates connected with the works hereby authorized, and all the remainder of such moneys shall be applied to the making, equip-

ing, completing and maintaining of the said railway, and other purposes of this Act."

"*Sec.* (9.) The said company may receive either from the Dominion Government or any of the Provincial Governments or from any persons as bodies corporate, municipal or politic, who may have power to make or grant the same in aid of the construction, equipment and maintenance of the said railway, free grants of lands, bonuses, loans or gifts of money or securities for money."

"*Sec.* (10.) When and so soon as shares to the amount of one hundred thousand dollars in the capital stock of the said company have been subscribed and fifteen per cent paid thereon *bona fide*, the provisional directors shall call a general meeting of the subscribers to the said capital stock at the city of Winnipeg for the purpose of electing directors of the said company giving at least four weeks previous notice by public advertisement in some newspaper published in the city of Winnipeg and also by circular addressed by mail to each subscriber, of the time, place and purpose of the said meeting."

"*Sec.* (11.) No person shall be elected a director of the company, unless he shall be the holder and owner in his own right or as trustee for any corporation, or at least forty (40) shares in the stock of the company and shall have paid up all calls thereon."

"*Sec.* (12.) At such general meeting the subscribers for the capital stock assembled who shall have so paid up ten per centum thereof, with such proxies as may be present shall choose nine persons to be directors of the said company (of whom five shall be a quorum) and may also pass such rules and regulations and by-laws as may be deemed expedient, provided they be not inconsistent with this Act or "*The Railway Act, 1868.*"

"*Sec.* (13.) Thereafter the general annual meeting of the shareholders of the said company for the election of directors and other general purposes, shall be held at such place as may be appointed by by-law of the company on the first Wednesday of the month of February in each year, and two weeks' previous notice thereof shall be given by publication in the *Canada Gazette*."

Sec. (26.) The Railway shall be commenced within eighteen months and completed within five years from the passing of this Act; and in default thereof the powers hereby conferred shall absolutely cease with respect to so much of the railway as then remains incomplete."

And in and by the Act secondly mentioned, it is amongst other things provided and enacted.

"*Sec.* (2.) In this Act 'the company' means 'The Mainitoba South-Western Colonization Railway Company.'"

"*Sec.* (3) The company shall have full power and authority to lay out, make, construct, work and maintain a railway as an extension of the line of railway, the said company are at present empowered to lay out, construct

and complete,—the said extension to commence at some point at or near Rock Lake, in the North-West Territories, and to run thence in a westerly direction to the Souris coal fields, on a line parallel or nearly so to the boundary line of the Dominion of Canada, and also from a point at or near the city of Winnipeg, and running thence to the point where the Canadian Pacific Railway will cross the Red river, all such lines or extensions to be approved of by the Governor in Council."

(2.) After the passing of the first Act, on the 17th June, 1879, a quorum to wit, fourteen (14,) in number of the persons named in section one (1) of such Act, as "provisional directors" duly convened at the city Hall in Winnipeg, in this Province, due notice of such meeting having been first given and of the time and place thereof, by publication in the *Canada Gazette*, for the purpose of organizing and opening books for subscriptions to the capital stock of the said corporation; and thereupon at such meeting, the said provisional directors did duly organize and did duly open books for subscription to such capital stock. After the opening of the said stock subscription books, as aforesaid, and prior to December 17, 1879, the following named persons had subscribed to the capital stock of the said corporation the number of shares and total sums as follows, that is to say:

NAME OF SUBSCRIBER.	NUMBER OF SHARES.	TOTAL AMT. OF STOCK.
David Young	100 shares.	$10.000.
William Murdock	50 "	5,000.
R. L. McGregor	100 "	10,000.
W. N. Kennedy	50 "	5,000.
Joseph Whitehead	100 "	10,000.
James H. Ashdown	50 "	5,000.
William H. Lyon	50 "	5,000.
S. C. Biggs	100 "	10,000.
Henry Hackett	50 "	5,000.
W. R. Bown	200 "	20,000.
John C. Schultz	150 "	15,000.

And on the shares so subscribed, being one thousand (1,000) in number and for an aggregate sum of one hundred thousand dollars, fifteen (15) per centum thereof was paid by the respective subscribers thereof; and on the day last mentioned, in pursuance of previous notice duly given by the board of provisional directors, the said subscribers convened in general meeting and organized the said corporation permanently; and to that end, elected a board of directors of said corporation consisting of nine of the said subscribers, namely: Messrs. Schultz, Bown, Young, Ashdown, Lyon, Murdoch, McGregor, Hackett and Kennedy; afterwards and on the same day the said directors who had been elected as aforesaid duly convened and organized themselves as the board of directors of the said corporation; and to that end, elected the said Kennedy to be president of the said corporation and the said Young to be the secretary and treasurer thereof.

(3.) Afterward and on August 25th, 1880, at a lawful meeting of the board of directors of the said corporation, such board duly resolved and di-

rected that the stock books of the said corporation should be opened for the purpose of receiving further subscriptions for an additional one hundred thousand dollars ($100,000) of the capital stock of such corporation, such sum being the balance required to be taken up in order to comply with the Act of incorporation of such company, in reference to the issuing of bonds; and that ten (10) per cent. of the amounts of such subscriptions should be paid thereon forthwith. And at the same meeting, the said board of directors further resolved and directed that, in order to equalize the said subscriptions of one thousand (1,000) shares on which fifteen (15) per cent. had been paid to the company, with the subscriptions to the said additional one thousand (1,000) shares on which only ten (10) per cent. would be paid, the secretary should be thereby instructed to allot to each of the said original subscribers, or their assigns, an amount of stock which would place them on an equal footing with those who should subscribe to such additional shares. And afterwards, and on the same 25th day of August, in pursuance of the said resolutions, the following named persons made additional subscriptions to the capital stock of the said company, for the number of shares and to the respective amounts following, that is to say :

NAMES OF SUBSCRIBERS.	NUMBER OF SHARES.	AMOUNTS.
R. S. McGregor	50 shares.	$ 5,000.
W. N. Kennedy	25 "	2,500.
W. N. Kennedy, trustee	50 "	5,000.
George Brown	50 "	5,000.
David Young	205 "	20,500.
John C. Schultz	205 "	20,500.
Hugh Sutherland	215 "	21,500.
Walter R. Bown	200 "	20,500.

And on the said shares, being one thousand (1,000) in number, and amounting to one hundred thousand dollars (100,000), the said subscribers respectively paid into the treasury of the said company ten (10) per centum of the amount thereof. At or about the date last aforesaid, under and in pursuance of the resolution last aforesaid, there were allotted and assigned to, and vested in, the following named persons, who then were either subscribers for certain of the said first one thousand (1,000) shares, or were assignees of subscribers for such shares, further and additional shares of the capital stock of said company to the number and of the amounts following, that is to say :

NAMES OF SUBSCRIBERS.	NUMBER OF SHARES.	AMOUNT OF SHARES.
Wm Murdoch	25 shares.	$ 2,500.
R. L. McGregor	50 "	5,000.
J. H. Ashdown	25 "	2,500.
W. R. Brown	100 "	10,000.

W. N. Kennedy	25 "	2,500.
David Young	88 "	8,800.
S. C. Biggs	25 "	2,500.
John C. Schultz	62 "	6,200.
James Cooper	25 "	2,500.
Wm. Bannerman	25 "	2,500.
Hugh Sutherland	25 "	2,500.
W. G. Fonseca	25 "	2,500.

The said shares last above mentioned were in all five hundred (500) in number, and for the whole amount of fifty thousand dollars (50,000) and by means of the said several subscriptions and allotments of shares there was in all on the 26th August 1880, duly subscribed to the capital stock of the said company, two thousand five hundred (2,500) shares, amounting to the sum of two hundred and fifty thousand dollars (250,000); and ten per centum of the said last named sum had been paid to said company upon the said shares by the said subscribers therefor, in manner aforesaid. No further or other payments have ever since been made to the said company, upon the said shares; and no further or other subscriptions to the capital stock of the said company have ever since been made, save a subscription for five hundred (500) shares thereof, madeby one of the plaintiffs, George H. Adams, on November 10th, 1881, the particulars whereof will be hereinafter stated.

(4.) On or about the 5th July 1880, by an Order of His Excellency the Governor-General, in Council, there were granted and agreed to be sold to the said company, to promote and aid the construction of its line of railway, three thousand eight hundred and forty (3,840) acres of crown lands, to be located near the line of such railway, at the price of one dollar ($1) per acre; and thereafter and on or about March 24, 1881, by the further Order of His Excellency in Council, the quantity of the said lands granted and to be sold to the said company was increased, so that the total quantity thereof should be six thousand four hundred (6400) acres per mile of such line of railway, from Winnipeg in this Province to a point in the vicinity of La Roche Percée on the Souris River, near the first Missouri plateau; the length of such line being estimated in such Order at, and in fact being, about three hundred and twelve miles, and the total quantity of lands granted and to be sold to said company being estimated in such Order at, and being in fact, about one million nine hundred and ninety-six thousand eight hundred (1,996,800) acres. In and by the said Order in Council, the concession of lands therein made were declared to be on divers conditions precedent, to be performed, on the part of the said company; among which conditions was the following, that is to say, that such company should build the first fifty (50) miles of its line of railway prior to June 1st, 1882; and it was in such order expressly provided and declared that in the event of the said company not building the first fifty (50) miles of the said railway within the period aforesaid, limited for the completion thereof, the Government should have the right to cancel the said concession, and assume entire control of the lands sold,—returning to the said company the moneys which may have been received on account thereof. The said concession of lands is and will be of great value to said company, and does and will largely form the basis of credit for the funds needed for the construction of the said line of railway.

(5) Although the said company, from the time of the permanent organization thereof, as aforesaid, up to July 5th, 1881, had constantly made great efforts to secure the capital needed to carry on its operations and to construct the said line of railway, the said company remained on the date last aforesaid without such capital; and it had before that time expended all its funds received from the said stock subscriptions, and had in addition incurred debts to the amount of fifty thousand dollars and more, which it was wholly unable to pay; and it had completed only about eleven hundred (1100) feet of railway, and had even failed and omitted to procure the right of way for such railway, except for a trifling distance in or near Winnipeg. On the day last aforesaid at a meeting of the board of directors of the said company, held at Welland, in the Province of Ontario, an agreement was entered into by the said board of directors, acting for and on behalf of the said company upon the one part, and E. A. C. Pew, acting on behalf of Henry Villard, of the city of New York, and certain other persons with him associated, upon the other part, for the construction and full completion of the said line of railway, as provided by the said original and amendatory Acts and as provided by the said Order-in-Council; and which agreement was in substance as follows:—The said company was to sell and transfer to the said Pew, acting for and on behalf of his said principals, seven thousand and five hundred (7,500) shares of the capital stock of the said company, the same being all the shares of the stock of the said company remaining unsubscribed; and the said shares were to be and remain in the hands of the said Pew and in those of his assigns fully paid and unassessable: the said company was also to pay and transfer to the said persons, for and on whose behalf the said Pew was acting, the first mortgage bonds of the said company to the amount of twenty thousand dollars ($20,000) for each mile of the said line of railway; and also any local or municipal aid which had been or might be received by such company to aid in the construction of the said line of railway: and the said principals of the said Pew, on their part, in consideration of the stock, bonds and local and municipal aid aforesaid, were to undertake the construction of, and to complete the said line of railway, according to the conditions and within the periods of time prescribed by the said Acts of Parliament and by the said Order-in-Council; and the directors of the said company then present at said meeting of the said board, to wit, the defendants *Schultz*, *Bown*, *McGregor* and *Murdoch*, and David Kemp, acting on behalf of themselves and of such other stockholders of the said company as should see fit to avail themselves of the terms of the arrangement next stated, further agreed with the said Pew, acting as aforesaid, that they, the said directors, and the said other stockholders should assign and transfer to him, the said Pew, all the shares of stock then by them respectively held, being parcel of the said two thousand and five hundred (2,500) shares subscribed and allotted as aforesaid; and he, the said Pew, in consideration of such transfers of stock, was to pay to each of the persons making such transfers all the several sums of money which they or their assignors had respectively paid to said company upon their subscriptions for such shares, and in addition thereto was to assign and transfer to such parties respectively a quantity of the said fully paid and unassessable stock equal to four-fifths of the number of shares of the said subscribed stock so transferred to him, the said Pew; and for the purpose of evidencing such arrangement, the substance thereof was, at the meeting aforesaid, or shortly thereafter, reduced to writing in the form of correspondence between the said parties, of which correspondence a copy is hereunto annexed, marked Ex-

hibit A; and afterwards, and at a meeting of the said board duly held on October 6th, 1881, the said memorandum of agreement was corrected by mutual assent of the said parties thereto by inserting the words "*in excess of seven thousand five hundred shares*" in the communication subscribed "David Kemp, Secretary," as noted on the margin of the copy of said communication forming part of Exhibit A: and the said arrangement was concluded, as aforesaid; and at a lawful meeting of the board of directors of the said company held at Winnipeg on July 20, 1881, the said *arrangement was duly ratified and confirmed by the said board.*

VI.

(6) For the purpose of carrying out the said arrangement, the said company, after the said arrangement had been entered into, and on July 5th, 1881, or about that date, by its board of directors and by its then president, *John C. Schultz*, and its then secretary, *David Kemp*, duly transferred and vested the said seven thousand five hundred (7,500) shares of fully paid and unaccessable stock to and in the following named persons as follows, namely;

NAME OF TRANSFEREE.	NUMBER OF SHARES.
Artemas H. Holmes	2,000 shares.
George R. Howell	40 "
Walter C. Stokes	40 "
George H. Adams	40 "
E. A. C. Pew	5,340 "
Edward D. Adams	40 "

And all the said persons so receiving the said shares of paid up and unassessable stock, including the said Pew, were at the time of such receipt the trustees and agents of the said Henry Villard and his associates in whose behalf the sain Pew had acted in making the said arrangement; and they and each of them received and held all such shares of stock as such trustees.

(7) The said two thousand five hundred (2,500) shares of subscribed capital stock were, at the time when the said arrangament was entered into—namely, on the date last aforesaid—held by the persons and in the amounts below specified, that is to say:

NAMES OF SHAREHOLDERS.	NUMBER OF SHARES HELD.
William Murdoch	75 shares.
R. L. McGregor	275 "
J. H. Ashdown	75 "
W. R. Bown	465 "
W. N. Kennedy	150 "

D. Young	469	"
S. C. Biggs	75	"
John Schultz	426	"
William Bannerman	75	"
George Brown	50	"
Hugh Sutherland	200	"
David Kemp	75	"
	2,500	

Subsequent to the making of the said arrangement, and prior to August 1st, 1881, for the purpose of carrying out and in part performance of the said arrangement, the said Pew, acting for and on behalf of the said Villard and his associates, paid to the following named persons the full sums which they and their assignors or either of them had paid to the said company upon their said subscriptions of capital stock—which sums were as follows, that is to say :

NAMES OF SHAREHOLDERS.	AMOUNTS PAID.
W.R. Bown	$4,650.
John C. Schultz	4,260.
R. L. McGregor	2,750.
William Murdoch	750.
David Kemp	750.
W. N. Kennedy	1,500.
William Bannerman	750.

And the said several persons last above named further to carry out the said arrangement, having received the said sums of money so repaid to them, each acting for himself, respectively assigned and transferred to the said Pew acting for the said Villard and his associates, all and singular their said shares of subscribed stock; and thereupon, simultaneously with such transfers to him, the said Pew in turn assigned and transferred unto each of the said several persons a number of the said shares of fully paid and unassessable stock as nearly equal as possible to four-fifths (4-5) of the number of shares of the said subscribed stock so transferred to him, the said Pew, the number of shares of fully paid and unassessable stock so transferred by the said Pew to the said persons was as follows, viz :

NAME OF ASSIGNEE.	NUMBER OF SHARES.
W. R. Bown	372 shares.
John C. Schultz	341 "
R. L. McGregor	220 "
William Murdoch	60 "
W. N. Kennedy	120 "
William Bannerman	60 "

Afterwards and before December 1st, 1881, further to carry out the said arrangement, and in further performance thereof, the said Villard and his associates or their assigns had paid to the remaining persons holding subscribed stock of the said company, at the time when the said arrangement was entered into, all the sums which they or their assignors had paid to said company upon their subscriptions to said stock, the names of the stockholders receiving such payments and the amounts paid to them having been as follows, that is to say—

NAMES OF SHAREHOLDERS.	AMOUNTS RECEIVED.
J. H. Ashdown	$ 750.
David Young	4,690.
S. C. Biggs	740
Hugh Sutherland	290
George Brown	500

For the purpose of procuring the necessary means to construct the said line of railway, the said company, acting through its board of directors, had before the making of the arrangement aforesaid duly determined to issue its negotiable bonds secured by a first mortgage of all its rights, franchises and property, including its railway and all the tolls, income and profits thereof, to the amount of twenty thousand dollars ($20,000) for each mile of said railway; and had, acting through its said board, duly authorized and empowered its president and secretary to sign, seal and deliver the said bonds and mortgage for it and in its name and behalf. Under and in pursuance of such authority, the president and secretary of the said company, about the time of the said arrangement, duly signed and sealed the coupon bonds of the said railway company to the total amount of six million two hundred and forty thousand dollars ($6,240,000), being at the rate per mile of said railway as aforesaid, bearing interest at the rate of per centum per year and payable in years from the date thereof, and after signing and sealing said bonds, placed the same in the temporary custody of "The Farmers' Loan and Trust Company," a corporation under the laws of the State of New York in the United States of America, and having its principal place of business in the city of New York in the said State: and at or about the same time, the said president or secretary, acting under and in pursuance of the authority aforesaid, duly signed and sealed for and in the name of the said company the mortgage or deed of trust of such company to the said Farmers' Loan and Trust company as trustee of all the rights, franchises and property of such company, including its railway and all tolls and income to be derived from the same, properly conditioned to secure the payment of such bonds; and such bonds are the same bonds mentioned in the said memorandum of the said arrangement between the said company and the said Pew; and the same bonds as those referred to in the formal agreement between the said company and the Oregon and Transcontinental company hereinafter mentioned.

(9.) During all the period of time since July 1st, 1881, "The Oregon and Transcontinental company" has been a corporation duly organized and

existing under the laws of the State of Oregon, in the United States, and has had full power and authority in Canada and elsewhere to undertake the construction of railways and other public works, and to enter into and carry out all contracts to that end which any natural person might lawfully enter into or carry out.

(10.) Shortly after the making of said arrangement between the said railway company and the said Pew, by proper and lawful assignments, all the rights and interests which the said Pew or the said Villard and his associates had acquired under such arrangement were duly and lawfully transferred to and vested in the said Oregon and Transcontinental company, which corporation has ever since held and owned all such rights and interests. After the said transfer to the said Oregon and Transcontinental company, for the purpose of setting forth their said arrangement for the construction of the said railway in a more formal and precise manner than the same had been stated in the said memorandum of July 5th, 1881, the terms of the said arrangement were embodied in a formal written instrument bearing date on October 14th, 1881, and of which a copy is hereunto annexed, marked Exhibit B. After the said instrument had been drawn up and signed on behalf of the said railway company by the president and secretary of such company, and sealed with the corporate seal thereof, at a meeting of the board of directors thereof duly held on November 9th, 1881, at Winnipeg in this Province, the said contract was duly ratified by a resolution of the said board duly passed and entered upon the records of the said railway company. After the said contract had been executed on the part of the said railway company, the same was duly executed on the part of the said Oregon and Transcontinental company.

(11. After the making of the said arrangement between the said railway company and the transfer thereof to the said Oregon and Transcontinental company, the last mentioned company forthwith proceeded to carry out such arrangement on its part in good faith; and to that end it is at once set about and has ever since continued prosecuting the work of locating and constructing the said line of railway with the utmost possible vigor and despatch; and prior to the exhibition of this bill, it the said Oregon and Transcontinental company had graded and prepared for the superstructure more than fifty (50) miles of the line of the railway extending from Winnipeg in a south-westerly direction, and had actually completed fifteen (15) miles and upwards of such line of railway, and procured and provided large quantities of iron rails, bridge timbers, cross-ties, and other materials and locomotive engines and cars needed for use in the construction of the said line; and had also expended large sums in payment of indebtedness incurred by the said railway company, prior to the making of such arrangement, in the location and construction of the said railway and in the procuring of materials, engines and cars therefor, and in the payment of the said old indebtedness of the said railway company, as has been already stated, and the said Oregon and Transcontinental company, had, prior to the exhibition of this bill, expended money and incurred liabilities to an amount exceeding eight hundred and forty-two thousand three hundred and forty-seven dollars ($842,347 46) which disbursements and outlays were distributed in approximately the sums following, that is to say—

Amount expended in paying old indebtedness of said railway company	$ 16,464 46

Amount expended in paying for work done and materials furnished in this province	314,576 00
Amount expended for locomotive engines and rolling stock and exclusive of freight and duties	98,182 00
Amount expended for materials besides rolling stock purchased outside this province exclusive of freight and duties	328,000 00
Amount expended for freight upon materials brought into this province	43,440 00
Amount expended for duties on engines, rolling stock, &c., and materials brought into this province	31,685 00
Expended since February 1st for current expenses, labor, materials, &c	10,000 00
Total	$842,347 46

All the said work was procured to be done and all the said materials, engines and rolling stock were required and procured to be furnished and all the said moneys were paid out and liabilities incurred by and on behalf of the said Oregon and Transcontinental company in full reliance upon its part that the said arrangement between the said railway company and the said E. A. C. Pew acting as aforesaid, would be carried out, as each and all the defendants herein are and have been well aware during all the progress of such work and during all the period of time, while the said engines, rolling stock and materials were being furnished and while the said moneys were being paid out and the said indebtedness was being incurred.

(12) At a lawful meeting of the board of directors of the said railway company held at Winnipeg, in this province, on November 9th, 1881, the plaintiff George H. Adams being present, the said board duly passed certain resolutions which were duly recorded in the minutes of the said railway company, and which were of the tenor following, that is to say:

"Whereas it has been claimed by certain parties that only two thou-
"sand shares of the capital stock of this company have been actually sub-
"scribed for, with the payment of ten per centum of the amount thereof in
"cash, now, therefore, for the purpose of preventing any question being
"raised as to the fact that two thousand five hundred shares of the capital
"stock of this company have actually been subscribed, with ten per centum
"of the amount thereof paid in cash, Be it resolved that George H. Adams,
"the holder of certain shares of the stock sold and transferred to E. A. C.
"Pew by resolution of the board of directors passed July 5th, 1881, be and
"and he hereby is authorized to surrender to this company five hundred of
"the shares last mentioned, and in lieu thereof to subscribe five hundred
"shares of the stock of this company, and to pay ten per centum of the
"amount of such stock in cash; Resolved, further, that the secretary of this
"company be and he hereby is empowered to accept the said surrender of
"shares, and to receive the said subscription of the said other shares and
"the payment to be made thereon, and to issue to the said Adams certifi-
"cates for such subscription shares."

Forthwith upon the passing of the resolutions aforesaid the said George H. Adams, who was then present and the holder of five hundred (500) shares and upwards of the said fully paid and unassessable stock, by an in-

strument duly entered and recorded upon the minutes of the said railway company, and by him subscribed, duly surrendered to said railway company five hundred (500) shares of the said fully paid and unassessable stock; which surrender was, thereupon, by a further instrument duly entered and recorded upon such minutes and subscribed by J. H. Hammond, then secretary of the said railway company, duly accepted by the said railway company; and forthwith thereafter by a further instrument duly entered and recorded upon such minutes and subscribed by him, the said George H. Adams, he, the said George H. Adams, duly subscribed for five hundred (500) other shares of the capital stock of the said railway company, in lieu of those shares by him so surrendered as aforesaid; and forthwith after such subscription, he, the said George H. Adams, paid into the treasury of the said railway company, in cash, the sum of five thousand dollars ($5,000) as the first instalment of ten (10) per cent. on the said stock so subscribed as aforesaid.

(13) At a lawful meeting of the board of directors of the said railway company, held at Winnipeg, in this Province, on January 2nd, 1882, it was duly resolved and ordered that the general annual meetings of the shareholders of the said railway company, for the election of directors and other purposes, should thereafter be held at the general office of such company, in the city of Winnipeg; and that such meetings should begin at eleven (11) o'clock, A. M. And, at the same meeting of the said board, it was further duly resolved that the secretary of the said company should give notice, as required by law, of the then next general annual meeting of the shareholders of the said railway company for the election of directors and for other purposes, to be holden at the general office of such company, in the city of Winnipeg, on the first Wednesday in February, 1882, beginning at eleven (11) o'clock A. M. Under and in pursuance of the said resolutions, and of the statutes in such case made and provided, the secretary of the said railway company did, thereafter, and before the first Wednesday in February, 1882, cause to be published, and there was actually published in the *Canada Gazette* during the period of two (2) weeks a notice in due form of law setting forth in substance that the general annual meeting of the stockholders of the said railway company for the election of directors of said company and for other purposes, would be held at the general office of such company, in Winnipeg, on the first (1st) Wednesday of February, 1882, beginning at eleven (11) o'clock A. M.

(14.) On Wednesday, February 1st, 1882, at eleven o'clock A. M., the following named persons were holders, and save as hereinafter stated, were owners in their own right or as trustees for a corporation, of the following mentioned shares of the capital stock of the said railway company, that is to say:

NAME OF SHAREHOLDER.	NUMBER OF SHARES.
J. H. Ashdown	75 shares.
Geo. H. Adams	2630 "
W. R. Bown	298 "
S. C. Biggs	65 "
W. Bannerman	60 "

George Brown	40 "
George M. Cumming	50 "
W. P. Clough	50 "
W. S. Davison	45 "
J. H. Hammond	65 "
A. H. Holmes	2700 "
G. R. Howell	40 "
W. N. Kennedy	80 "
W. Murdoch	55 "
C. V. Mead	40 "
R. L. McGregor	40 "
W. J. McGregor	5 "
Robert E. O'Brien	50 "
T. F. Oakes	1000 "
E. A. C. Pew	338 "
J. C. Schultz	499 "
Hugh Sutherland	290 "
W. C. Stokes	40 "
A. J. Thomas	1010 "
E. M. Wood	45 "
David Young	94 "
D. Tisdale	10 "
F. H. Brydges	10 "
H. N. Ruttan	10 "
J. R. Sutherland	10 "
John Osborne	10 "
P. J. Brown	10 "
E. A. Winstanley	10 "
J. A. Ewing	10 "
V. Noad	10 "
J. D. Baine	10 "
E. F. Wells	10 "
J. M. Rousseaux	10 "
J Stewart	5 "
E. Elliott	5 "
S. Mulvey	10 "
L. O. Armstrong	5 "
R. McLennan	40 "
J. H. Burns	5 "
F. B. Robertson	1 "
W. G. Dennison	5 "
D. H. McMillian	40 "
J. H. Leishman	5 "
R. Cartwright	5 "
T. C. Scoble	40 "
G. M. Wilson	10 "
	10,000 shares.

At the time and place fixed by law and by the said resolutions of the said board of directors, namely: at the general office of the said raillway company in Winnipeg, in this Province, beginning at eleven (11) o'clock a. m., on Wednesday, February 1st 1882, the stockholders of the said railway

company duly held their general annual meeting for the election of directors a d other purposes; and at such meeting all the persons mentioned as shareholders in the said railway company, in the next preceeding paragraph mentioned, save, G. H. Adams, W. Bannerman, A. H. Holmes, G. R. Howell, T. E. Oakes, W. C. Stokes, A. J. Thomas and David Young were present in their proper persons and participated in the business thereof. Of the said stockholders not personally present at the said meeting, the said Adams, Holmes, Howell, Oakes, Stokes and Thomas, prior to the said meeting, by several instruments executed by them respectively and in the form prescribed by sub-section seven (7) of section nineteen (19) of *"The Consolidated Railway Act, 1879,"* had duly constituted the said J. H. Hammond to be their proxy, and in their absence to vote or give their respective assents to any business matter or thing relating to the undertaking of the said railway company that might be mentioned or proposed at any meeting of the shareholders of the said railway company, or any of them, in such manner as he, the said Hammond, should think proper; and likewise prior to the said meeting by an instrument in like form as those last aforesaid, the said David Young had duly constituted the said J. H. Ashdown his proxy with like power as those enjoyed by the said Hammond under the said last named instrument; and likewise prior to the said meeting by a similar instrument, the said W. Bannerman had duly constitued the said P. J. Brown, his proxy, with like powers as those enjoyed by the said Hammond as aforesaid. The said Adams, Holmes, Howell, Oakes, Stokes and Thomas were all absent from the said meeting, and under and in pursuance of his said authority so to do, the said Hammond duly attended the said meeting and voted upon all questions arising thereat, and for all officers of said meeting and for directors of the said railway company for the coming year, as the proxy of them, the said Adams, Holmes, Howell, Oakes, Stokes and Thomas. The said Young and the said Bannerman were also absent from the said meeting, and the said Ashdown and P. J. Brown, acting under their said respective authorizations, so to do, respectively attended said meeting and voted upon all questions arising thereat, and for all officers of said meeting, and for directors of the said railway company for the coming year, as the respective proxies of them, the said Young and Bannerman.

(16.) At the said meeting last above mentioned, the said Hugh Sutherland was duly elected chairman thereof, and the said George M. Cumming was duly elected secretary thereof; and the said S. C. Biggs, J. H. Ashdown and J. H. Hammond were duly elected scrutineers of votes cast for directors of said railway company; and after such meeting had been duly organized by the election of the said officers thereof, the following named persons, complainants in this bill, namely: J. H. Hammond, Hugh Sutherland, Geo. Brown, J. H. Ashdown, Robert E. O'Brien, Charles V. Mead, George M. Cumming and W. P. Clough together with Edmund M. Wood, each of whom was then the owner in his own name or as the trustee of a corporation, of at least forty shares of stock of said company, and otherwise duly qualified to hold the office of a director of such railway company, were duly elected directors of such railway company for the year next succeeding such meeting. And at the same meeting a resolution was duly passed that all proceedings had and taken and all orders and resolutions passed by the board of directors of the said railway company at any meeting of such board or of a majority of the said directors, held on and since the fifth (5th) day of July, 1881, so far as the same appear upon the records of the said company, should

be and were thereby ratified and confirmed, except only such action as related to the alleged arrangements made by E. A. C. Pew, professing to act on behalf of the said company, concerning the town of Niagara; and also except any action which might have been taken, employing William Murdoch as chief engineer of such company or employing Joseph Ryan as solicitor thereof; and the chairman and secretary of the said scrutineers of votes cast thereat for directors and the said directors themselves were each and all elected and the said resolutions were passed by the lawful votes in favor of the same of thirty-two (32) shareholders of the said railway company, owning and voting upon eight thousand five hundred and nineteen (8519) shares of the capital stock of such company, whose names and number of shares are as follows, that is to say—

NAMES OF SHAREHOLDERS VOTING IN FAVOR OF SAID OFFICERS AND OF SAID RESOLUTIONS.	NUMBER of SHARES VOTED UPON BY SUCH SHAREHOLDERS.
J. H. Ashdown	75 shares.
George H. Adams	2630 "
S. C. Biggs	65 "
W. Bannerman	60 "
George Brown	40 "
George M. Cumming	50 "
W. P. Clough	50 "
W. S. Davison	45 "
J. H. Hammond	65 "
A. H. Holmes	2700 "
G. R. Howell	40 "
C. V. Mead	40 "
R. E. O'Brien	50 "
Thomas F. Oakes	1000 "
W. C. Stokes	40 "
Hugh Sutherland	290 "
A. J. Thomas	1010 "
E. M. Wood	45 "
David Young	94 "
David Tisdale	10 "
F. H. Brydges	10 "
H. N. Ruttan	10 "
G. M. Wilson	10 "
James R. Sutherland	10 "
John Osborne	10 "
P. J. Brown	10 "
John Rosseaux	10 "
E. A. Winstanley	10 "
John A. Ewing	10 "
Vernon Noad	10 "
J. D. Baine	10 "
E. F. Wells	10 "
Total number of shares	8,519 shares.

The said eight thousand five hundred and nineteen (8,519) shares included all the said five hundred (500) shares before that time subscribed by the said George H. Adams, and also the said two thousand five hundred (2,500) shares subscribed as the said first and second subscriptions, save three hundred and eight (308) shares out of the stock assigned as aforesaid to the said E. A. C. Pew by the said Schultz and others, and which the said Pew had wrongfully omitted to assign to his principals in the said arrangement for the construction of the said line of railway. The residue of the said eight thousand five hundred and nineteen shares, being five thousand eight hundred and thirty-seven (5,837) in number, were part of the said seven thousand five hundred (7,500) shares of fully paid and unassessable stock.

(17) After the complainants Hammond, Hugh Sutherland, Ashdown, Brown, O'Brien, Mead, Cumming and Clough, and the said Wood, had been elected directors of the said railway company as aforesaid, and on the first (1st) day of February, 1882, they, the said directors, all duly met at the general office of the said railway company, in Winnipeg, aforesaid, and duly organized as such board; and to that end they, the said directors, duly elected the said Hammond to be president of the said company, and the said Mead to be secretary thereof for the coming year. At the same meeting of the said board such board duly passed a resolution that the president of the said railway company, and in his absence the vice-president thereof, have for and on behalf of such company the custody of all the property of such company; and that it should be the duty of such officers and they should thereby be authorized to take such measures and to institute such proceedings in the name of such company, or otherwise, as might be necessary or expedient, to protect all the property of such company in such possession against any attempt on the part of any person to violate such possession: and at the same meeting of the said board of directors, such board duly passed a further resolution that the president of the said company, and the solicitor thereof, the Hon. S. C. Biggs, should be, and thereby were, authorized and instructed to institute such legal proceedings as to them might, or either of them might seem necessary or proper, in the name and on behalf of such company against any person or persons wrongfully or improperly claiming to be officers or directors of this company, to prevent them acting as such officers or directors.

(18) At a subsequent lawful meeting of the said board of directors of the said railway company, held at the said general office of such company on February 6th, 1882, the said E. M. Wood duly resigned his office of director of said company, which resignation was forthwith duly accepted by the said board; and thereupon the plaintiff, James R. Sutherland, who was then the holder of forty (40) shares and upwards of the stock of the said railway company in his own right, and who was otherwise duly qualified to act as a director of such company, was duly appointed and chosen by said board as a director of such company to fill the vacancy made as aforesaid by the resignation of the said Wood.

(19) For and during a period of several months immediately prior to the time of the holding of the said annual meeting of shareholders, the plaintiff, J. H. Hammond, was and acted as the secretary and treasurer of the said railwaycompany and the general manager of its business affairs, and by

reason of his several capacities, he, the said Hammond, was and remained in the lawful and peaceable possession of the corporation seal of the said railway company, and of all the books and records thereof and of the general office building thereof, and of all other property and effects of said company ; and he, the said plaintiff, ever since the said annual meeting, by virtue of his said office of President of said railway company, and of the said resolution of the said board of directors mentioned in paragraph XVII of this bill, has been and now is in lawful and peaceable possession and has continuously had and still has the custody of the said corporate seal and records, and of the said general office building and other property and effects of the said railway company.

(XX) Notwithstanding the premises, the defendants in this bill, John C. Schultz, W. R. Brown, W. N. Kennedy, William Murdoch, R. L. McGregor, and E. A. C. Pew, although collectively holding but one thousand four hundred and eighty one (1,481) shares of the stock of the said railway company, including the said three hundred and eight (308) shares of subscribed stock wrongfully retained by the said Pew as aforesaid, and actual owners of but one thousand one hundred and seventy-three (1,173) shares, all belonging to the said class of fully paid and unassessable stock, shortly prior to the said annual meeting, conspired to deprive, fradulently the said holders of the remaining stock in said railway company of the control of the said company and of the management of its affairs, and to seize the corporate seal and records of the said company, and to take the property and effects thereof into their own hands ; to the end, as the complainants are informed and believe, of either wholly preventing the construction of the said line of rilway under the said arrangement and contract for the construction thereof, and within the time prescribed by the said Order-in-Council, or of compelling the said Oregon and Transcontinental Company to pay to them or for their use a large sum of money or to bestow upon them large pecuniary advantages of some sort as a consideration of refraining from their said wrongful and fraudulent designs and permitting the said arrangement and contract to be carried out. For the purpose of promoting the said wrongful and fraudulent scheme, the said Bown, Kennedy, and Murdoch, or one of them, on or shortly prior to the day of the said annual meeting, transferred to the said Stewart, Elliott, Mulvey, Armstrong, McLennan, Burns, Robertson, Dennison, McMillan, Leishman, Cartwright and Scoble the small quantities of stock standing in their respective names, as aforesaid, to the end, as the plaintiffs are informed and believe, that said persons might be present at such annual meeting under pretence of being shareholders in said railway company and assist in weatever violent or unlawful proceedings the said chief conspirators might deem necessary to accomplish the said unlawful purposes ; and further to carry forward the said wrongful designs, the said persons did attend the said annual meeting, and all of them, namely: the said Bown, Kenneny, Murdoch, McGregor, Pew, Schultz, Stewart, Elliott, Murvey, Armstrong, McLennan, Burns, Dennison, McMillan, Leishman, Cartwright and Scoble, then and there conducted themselves in a violent, noisy and riotous manner, with intent to prevent the other stockholders then present from transacting any business, and pretended to vote for and declare elected as directors of the said railway company, the said Kennedy, Murdoch, McGregor, McLennan, Schultz, Bown, Pew, McMillan and Scoble. And afterwards and further to carry forward the said unlawful project, on the same day of the said annual meet-

ing, the said Kennedy, Murdoch, McGregor, McLennan, Schultz, Pew, McMillan and Scoble assembled themselves at the office of the said Schultz, in the said city of Winnipeg, and pretended to organize themselves as the board of directors of the said railway company, and to that end, they pretended to elect the said Schultz as president, and the said Armstrong as secretary, and the said Murvey as treasurer of the said railway company.

And further to carry forward the said conspiracy, the said persons last aforesaid have from time to time, since the said pretended board meeting and organization, assembled themselves and pretended to be, and to transact business as the board of directors of the said railway company; and they have repeatedly and continuously sought to obstruct, as much as possible, the business of the said railway company by denying in a public manner the authority of the said lawful directors and officers, who are plaintiffs in this bill, and by publishing in one or more newspapers of general circulation at Winnipeg aforesaid, a notice of which a copy is hereunto annexed, marked Exhibit C. And they, the said defendants, further to promote the said fraudulent scheme, publicly deny the binding effect of the said arrangement and contract for the construction of the said line of railway, and threaten and announce that they will forcibly prevent such contract from being carried out and said line of railway from being built thereunder; and in furtherance of such purpose, they caused to be made out and signed by the said L. O. Armstrong, pretending to act as secretary of the said railway company, and caused to be delivered to the plainriff, J. H. Hammond, a paper writing of which a copy is hereunto annexed, marked Exhibit D. And the said defendants further give out and threaten that they will wrongfully seize upon the correspondence of the said railway company, passing through the public mails; and to enable them to seize such correspondence, the said Schultz falsely pretending to act as president of the said railway company, shortly prior to the exhibition of this bill, being instigated thereto by the other defendants aforesaid, procured a box in the public post office, at the said city of Winnipeg, over which he would have complete control, and to which he would have access at his pleasure; and he instructed the postmaster in charge of such office, or his deputies or clerks, to place in such box all correspondence and other mail matter arriving at such post office for the said railway company. And the defendants give out and threaten that they will forcibly seize upon the general office building and upon the books, papers and seal of the said railway company, and will deprive the lawfully constituted directors and officers of said company of the possession and custody of said building, books, papers and the said seal.

(21.) If the said Oregon and Transcontinental company be not hindered in the prosecution of the work of constructing the said line of railway in accordance with the said arrangement and centract for the construction thereof, and the business operations of the said company be not interfered with by the defendants, in the manner threatened by them as aforesaid, and the plaintiffs, who are the lawfully constituted directors and officers of the said railway company, be not deprived of, or obstructed in, the proper conduct of the affairs of such corporation, the said line of railway can and will be constructed and completed in the time and manner prescribed by the said Acts of Parliament, and of the said Order in Council; but in case any hindrances or obstructions be interposed to the prosecution of such work, or to

the management of the concerns of the said company by the said lawfully constituted directors or officers thereof, as threatened by the defendants, the completion of any considerable portion of the said line of railway will be wholly prevented.

(22.) By reason of the promises, the plaintiffs will be driven to a great multiplicity of actions to defend their rights in the said corporation, and in its books, property and effects, and will be without any adequate remedy at law whatever.

(23) The plaintiffs, other than the said railway company, and the said officers and directors of such company, are the holders of stock in such company to the respective amounts held by them at the time of the said annual meeting of stockholders.

Wherefore the plaintiffs pray:—

1. That the defendants and each of them and their agents and servants, and the agents and servants of each of them, be restrained and perpetually enjoined from disturbing or in any manner interfering with the complainants, J. H. Hammond, Hugh Sutherland, J. H. Ashdown, George Brown, James R. Sutherland, Robert E. O'Brien, Charles V. Mead, George M. Cumming, and W. P. Clough, in the exercise of their duties and powers as directors of the said Manitoba South-Western Colonization Railway Company, until their respective terms of office as such directors shall have expired and their successors have been elected and have qualified.

2. That the defendants and each of them and their agents and servants, and the agents and servants of each of them be restrained and enjoined from disturbing the possession by the said John H. Hammond, as president of the said railway company, or his successor in office, or any other lawfully appointed agent of said railway company, of the moneys, papers, or effects of the said railway company, including the correspondence thereof passing through the mails; and from interfering with the construction of the line of railway of the said railway company under the existing contract, and arrangement with the said Oregon and Transcontinental Company, as the same are set forth in this bill of complaint.

3. That the complainants may have their costs in this suit and have such other and further relief as may be just.

The following are the exhibits referred to in, and made a part of, the bill of complaint:

EXHIBIT A.

Board of Directors of the Manitoba South-Western Colonization Railway Company.

GENTLEMEN:—

I am instructed by certain gentlemen who take an interest in your efforts to secure the construction of your railway to offer such aid as is contained in the following propositions:—

The parties I represent are willing to go on at once with the construction and equipment of your whole line of railway and will secure the running of trains to a point fifty miles distant from Winnipeg by the 1st day of June, A.D 1882; but as the doing of this involves the provision of many millions of dollars, they require you to place them in a position whereby they will acquire say nine thousand six hundred and forty shares of the capital stock of the company, and in the meantime a controlling interest in the management of the same.

The parties whom I represent, recognizing the value of the preliminary work done by the present shareholders in the securing of the franchise, land grant and municipal and other aid, and are willing that they should be recouped the amount which in the payment of ten per cent. on their stock they have expended, and that in the settlement of the whole stock, they shall retain so much of the stock as has been required to qualify them as directors. Inasmuch also as the holding of a large controlling interest in the capital stock by the parties I represent is in the meantime the only valuable interest they acquire as against the large amount they agree to expend, it will be required that the company should issue to the capitalists furnishing the money, all stock delivered to them, fully paid and unassessable, in consideration of the large sums to be expended, advanced.

We will build the railroad from Winnipeg to La Roche Percée, with all the necessary stations, water tanks, switches and sidings, in a good substantial manner, with a four feet eight and a half inches guage and equip the same according to the plans and specifications to be agreed upon by and between the directors of said company and ourselves, for and in consideration of nine thousand six hundred and forty shares of the capital stock of said company, of the par value of one hundred dollars each, the same being fully paid and unassessable, to be delivered to us, the whole capital being $1,000,000, and in the further consideration of the delivery to us of the first mortgage bonds of the company to the amount of six millions, two hundred and forty thousand dollars, to be issued in three series, viz.: First, second and third, according to the terms of the mortgage made on the first day of July, one thousand eight hundred and eighty-one, by said company to the Farmers' Loan and Trust Company of the city of New York, in pursuance of "An

Act of Parliament of the Dominion of Canada," passed in the forty-second year of the reign of Her present Majesty, chap. 66, entitled "An Act to incorporate The Manitoba South-Western Colonization Railway Company" with the understanding, however, that all previous and existing contracts made by the said company with all other parties shall be cancelled, saving and excepting one contract for constructing the road bed made with P. J. Brown on the 2nd September, 1880. We on our part further agree as part of this proposal to complete the first fifty miles of road from Winnipeg west, on or before the first day of June, 1882, and if possible to comply with the provisions of the North Dufferin bonus by-law for $80,000. We further agree to give railway service once a day to the village of Nelsonville on or before the first day of February, 1882; and such fence as shall be required by municipalities giving bonuses shall be built.

Yours respectfully,

E. A. C. PEW.

Welland, July 5th, 1881.

WELLAND, ONT., 5th July, 1881.

E. A. C. Pew, Esq.

DEAR RIR:—The Board of the Manitoba South-Western Colonization Railway Company, in discussing your proposition of this afternoon, in which you ask as a condition of furnishing the large sum of money required to build the road, that nine thousand six hundred and forty shares of the capital stock of the company should be transferred to you, and that the directors retain enough to qualify themselves. In regard to this part of your proposition the board direct me to say that in all matters of subscribed stock they have only power to deal with such stock as they individually hold, and that while the quorum of the board are willing to entertain individually any reasonable proposition as regards stock, yet they cannot as a board promise you to transfer in the name of the company, and for the company's purposes and benefit, more than seven thousand five hundred shares; and I am also requested to say that the bonds not having been printed, cannot be given to you; and that as the trustee for the bonds is the Farmers Loan and Trust Company of New York, the bonds must first go there; but that there is no objection to your taking on yourself the task of seeing them duly registered upon the books of that company.

The individual members of the board now here desire me to say that as regards the stock they now hold they are willing to transfer to you all except that quantity necessary for their qualifiaation which they now hold, in consideration of your paying to them the amount which they paid for it, and in consideration that you will transfer back to them forthwith four-fifths of the quantity transferred to you in excess of seven thouand five hundred shares, * and also that you give an undertaking agreeing that should the remaining stockholders desire to avail themselves of the same terms and conditions that you will hold the offer open to them for at least long enough to make them acquainted with its nature. As regards the representation on the board, I am requested to say that the one vacancy

which we now have upon the board may be filled by the appointment of yourself as director and Vice-President. The great object of the present directorate is to obtain the building of the road, and the building of the whole road within three years must be the essence of this agreement; meantime the present board will do everything it can to facilitate your effort, and desire you to answer this communication before proceeding further with the discussion of your prooosition.

I am Sir, Yours truly,

DAVID KEMP,

Secretary.

Welland, Ont.

P. S.—The board wish to remind you of the arrangement with the Hon. Sir Richard Cartwright and Mr. Duncan McArthur regarding the sale of bonds, and to stipulate that this shall continue, and also to the appointment of such persons who have had the promise of situations in the company.

DAVID KEMP,

Secretary.

The above is satisfactory, and will be considered part of my proposition.

E. A. C. PEW.

Welland, July 5th, 1881.

* Marginal note iu minute book: "Authority for inserting words 'in excess of seven thousand five hundred shares' will be found in page 90, proceedings October 6th, 1881.

J. H. HAMMOND,

Secretary."

EXHIBIT B.

This memorandum of agreement made this 14th day of October, A. D. 1881, between the Manitoba South-Western Colonization Railway Company, a corporation incerporated by an Act of Parliament of the Dominion of Canada, passed in the forty-second year of the Reign of Her Majesty, Chapter 66, entitled "An Act to incorporate the Manitoba, South-Western Colonization Railway Company," hereinafter referred to and described as the South-Western Company, *of the first part*, and the Oregon and Transcontinental

company, a corporation duly organized, created and existing under and by virtue of the laws of the State of Oregon, hereinafter referred to and described as the Oregon Company, *of the second part.*

Whereas by the Act hereinbefore referred to, the South-Western Company was, incorporated with power to construct a railway commencing at Winnipeg in the Province of Manitoba, and following a line thence southwestwardly from Winnipeg to some point at or near Rock Lake, near the western boundary of the Province, and by further Act of Parliament of said Dominion of Canada, passed in the year 1880, Chapter 53 entitled "An Act to extend the powers of the Manitoba South-Western Colonization Railway Company, and to further Amend the Act incorporating the said company," the South-Western company was *inter alia* authorized to extend their said line of railway, the said extension to commence at some point at or near Rock Lake in the North-West Territory, and to run thence in a westwardly direction to the Souris coal fields, on a line parallel or nearly so to the boundary line of the Dominion of Canada, making on the whole a total estimated length of three hundred and twelve miles, (312) of railway, and whereas the said South-Western company has been and is unable without negotiating its bonds and stock to obtain the moneys wherewith to build the said railway above described, and whereas the Oregon company is willing to build and complete and equip the same for the consideration herein named.

Now these presents witness, that the parties hereto covenant and agree each with the other as follows:

1. The South-Western company promises and agrees forthwith to issue, sell and deliver in proportion of twenty thsusand dollars per mile, for each mile of the length of said railway constructed or under contract to be constructed, all and every its first mortgage bonds mentioned and described in the mortgage of the South-Western company to the Farmers' Loan and Trust company, being in the aggregate six thousand two hundred and forty bonds of one thousand dollars each as set forth and described in the said mortgage as and to be the absolute property of the said Oregon company to be by it diposed of in such manner as to it may seem proper; and the South-Western company will also forthwith issue, sell, assign, transfer and deliver to the Oregon Company of the shares of its capital stock, fully paid and unassessable, in consideration of the covenants and agreements herein contained on the part of the Oregon company to be performed, not less than seven thousand five hundred shares of one hundred dollars each, and so many of the remaining twenty-five hundred shares of its authorized capital upon which ten per cent. has been fully paid, as the holders thereof shall consent and agree to transfer and deliver.

II. The Oregon company covenants and agrees that upon the performance of the agreement of the South-Western company herein contained, and the approval by the Canadian Government of the grade, plans and location of the said railway as prescribed by the said Acts or any other Act of Parliament, and the Order in Council of date 24th of March, 1881, touching the land grant of the said South-Westesn company, it will at its own expense and with its own funds lay out, locate, construct, complete and fully equip with the requisite and proper amount of rolling stock and equipments, furnish and equip a single track railway of four feet eight and one-half inches

in width of guage, between the points hereinbefore described, an estimated length in all of three hundred and twelve miles, in all respects as required by the Acts of Parliament hereinbnfore referred to, or any other Act in any manner relating thereto, and the first firty miles thereof prior to the first day of June, 1882.

And also the said Oregon Company will pay to the Government of the Dominion of Canada all sums of money which may at any time hereafter become due and payable by the said South-Western Company, as payment for lands granted to the said company under the provisions of the Order in Council dated the 24th of March, 1881, or any further Orders in Council which may be made in relation thereto. And will assume all expenses and debts properly incurred, or which may hereafter be incurred by the board of directors of the said South-Western Company or their offices in relation to the business of the said company.

And will provide out of their own funds for any of the coupons of the said mortgage bonds of the South-Western Company which may become due and payable and which may not be provided for by the said Farmers Loan and Trust Company, and will accept from any of the subscribers or holders of the two hundred and fifty thousand dollars (250,000) stock upon which the ten per cent. has been paid such amount thereof as they may desire or be willing to transfer to the said Oregon Company and will assign and transfer to the said stockholders so trahsferring the said stock respectively an equal amount of paid up and unincumbered stock of the said company.

IN WITNESS WHEREOF the South-Western Company has caused its corporate seal to be affixed hereto and these presents to be attested by the signature of its president and secretary; and the Oregon Company has hereunto set its corporote seal attested by the signature of its president and seceetary.

JOHN SCHULTZ,

President.

{ L. S. }

J. H. HAMMOND,

Secretary.

EXHIBIT C.

PUBLIC NOTICE

Is hereby given that that the following resolution was adopted at a meeting of the Directors of the Manitoba South-Western Colonization Railway Company, held at Winnipeg February 1st, 1882, "That all officials and

servants of this company, excepting L. O. Armstrong, secretary, and Stewart Mulvey, treasurer, be and are hereby dismissed from the service of the company, and that the Secretary be directed to insert in the newspapers of this city an advertisement to the public that this company will not be responsible for any debts contracted by any person not duly authorized by this board. Carried."

All persons are therefore requested to take notice and govern themselves accordingly.

L. O. ARMSTRONG,

Secretary M. S. W. C. Ry.

EXHIBIT D.

The Manitoba South-Western Colonization Railway Company.

WINNIPEG, MANITOBA, 2nd February, 1882.

JOHN SCHULTZ,
President.

To Generald Hammond,
Winnipeg.

SIR,—

I am instructed by the Board of Directors of the Manitoba South-Western Colonization Railway Company to inform you as trustee and general agent of the Oregon and Transcontinental Company that they are advised that the contract assumed to be made between the two companies above mentioned, for the construction of the Manitoba South-Western Colonization Railway was and is *ultra vires* of the Railway Cempany and illegal. I am instructed to add that this Board is desirous of making with the least possible delay, a new arrangement with the Oregon and Transcontinental Company, whereby the latter Company may be fully and equitably compensated for all work and expenditure already properly performed or made by them, and enuring to the benefit of the Railway Company, and for the completion of the work of construction of the road. I am instructed to request you to submit this letter to the Oregon and Transcontinental Company, with the request of this Board for an early reply thereto.

I am Sir, Your obedient servant,

L. O. ARMSTRONG,

Secretary.

THE CHIEF JUSTICE.—

This is a motion, on notice to the defendants, for an order for an injunction to restrain the defendants in terms of the prayer of the bill of complaint. The motion, by arrangement between the parties, came on for hearing before the Court on the 16th February, 1882, in the presence of counsel for all parties, except the defendant, Pew, who, although present in Court during the whole argument, did not appear by counsel.

The accuracy of the allegations and statements in the bill are verified by the affidavit of General Hammond, one of the plaintiffs, and for several months last past the secretary of the railway company and the general manager of its affairs, who was subjected to cross-examination on his affidavit, and to examination on the allegations and statements in the whole bill of complaint. Affidavits in answer to some allegations in the bill were filed by the defendants, and affidavits in reply thereto were filed by the plaintiffs. But from a careful review of all the materials now before the Court, I am of opinion that the allegations, statements and charges in the bill of complaint have been and are, if not literally, at least substantially made out beyond all reasonable controversy. This, indeed, throughout a somewhat lengthy argument, seemed to have been admitted, with one single exception as to the retention and possession by those who voted for the plaintiff—directors of the identical 2,500 shares of stock on which 10 per cent. had been paid—called for the sake of distinction, "the original stock." This, I think, was the only material fact, as *a fact*, denied by counsel for the defendants, although as it seemed to me, the evidence on this point was all one way with no contradiction. I shall hereafter refer to the controversy about "original stock."

Counsel for the defendants had many objections to the *inferences* of fact and conclusions of law which the plaintiffs *inferred* from admitted facts, or drew from admitted or *inferential* facts—and to the relief the plaintiffs ask—but substantially none to the simple facts, except as I have mentioned.

This is not surprising; for *Schultz, Bown, Murdoch, McGregor, Kennedy* and *Pew*, the *real defendants* in this suit, the other defendants being only ancillary and accidental, having been made shareholders by the transfer to them by the *real defendants* of a small number of shares a day or two prior to the general annual meeting of shareholders, as is with reason alleged, only for the accomplishment of the *purposes* of the *real defendants*—were directors of the company and initiated, negotiated, arranged, formulated and consummated those transactions, and subsequently at various times as directors duly convened, in due form of law, acquiesced in, ratified and confirmed, and wholly executed on their part, acting as directors of the company, those transactions which they now impeach and seek to be made void—the record and history of which they have left behind them inscribed in the minutes of their proceedings, and in books and documents, not susceptible of contradiction as questions of fact—of all which the bill of complaint gives a short and succinct history and statement.

It will be convenient, in the first place to dispose of certain objections to the plaintiffs' bill, taken in the form of demurrer *ore tenus*.

It is said the bill is mutrifarious. Assuming all the allegations and statements to be true, I fail to detect the slightest ground upon which such an objection can rest, either in substance or form—as respects the subject matter of the bill or the parties to it. *All* the plaintiffs have an interest in

common—have *but one interest*—one course of procedure in pursuing that interest, and aim at but one object. In so far as the plaintiffs are concerned nothing could be more free from diversity of interest, the mode of prosecuting it, or the purpose or object aimed at. The defendants, against whom relief is sought, are, assuming the allegations and statements in the bill to be true, as we must, in considering the demurrer, a band of reckless conspirators, bent on acts injurious and destructive of the interests and property of the plaintiffs. The defendants are called upon to answer one distinct charge of which it is alleged they are all alike guilty. I will say no more. I simply refer to a very primary, elementary and easily accessible authority, Story's Equity pleadings, Secs. 279, 279 a, 279 b, 280, *as to matter*; and to Secs. 236, 271 and 279, 280, *as to parties.*

But by 15 and 16, V. c. 86. sec. 49, no suit in Equity is to be dismissed by reason only of the misjoinder of persons as plaintiffs therein: "but whenever it appears to the court that notwithstanding the conflict of interest in the co-plaintiffs, *or the want of interest in some of the plaintiffs*, or the existence of some ground of defence, affecting some or one of the plaintiffs, but that the plaintiffs or some or one are or is entitled to relief, the court has power to grant such relief and to modify its decree according to the special circumstances of the case; and for that purpose to direct such amendments, if any, as may be necessary; and at the hearing, before such amendments are made, to treat any one or more of the plaintiffs as if he or they was or were a defendant or defendants in the suit, and if as the remaining or other plaintiff or plaintiffs was or were the only plaintiff or plaintiffs, on the record; and where there is a misjoinder of plaintiffs, and the plaintiff having an interest has died leaving the plaintiff on the record without an interest, the court may at the hearing of the cause, order the cause to stand revived as may appear just, and proceed to a decision of the cause if it sees fit, and to give such directions as to costs or otherwise as appears just and expedient." This relieves the court from any embarrassment in respect of misjoinder of plaintiffs supposing there were any in this case; but I repeat, I do not think there is.

It was also objected that the plaintiffs, *Hammond, Cumming, O'Brien Mead* and *Clough*, were disqualified to be directors by reason of their qualification consisting of stock which they respectively held, transferred to them by the corporation, The Oregon and Transcontinental Company, but nevertheless in fact, in *trust*, though absolute in form.

This objection is to be determined by the construction of 42 V., c. 66, sec. 11, which reads as follows:—"*No person shall be elected a director of the company unless he shall be the holder and owner in his own right, or as a trustee for any corporation, of at least 40 shares in the stock of the company, and shall have paid up all calls thereon.*'

It is admitted for the purposes of the determination of the question involved in this objection, that the plaintiffs excepted to on this ground, each, hold, at least 40 shares of the stock of the company, but not in their own respective rights, but for a corporation, and that all calls thereon were and are paid up. Without any modifying or controlling enactment; it would seem this plain provision in the Special Act incorporating the company, is conclusive of the whole question. Indeed, I understood counsel for the defendants to assent to this proposition; but they argue this provision is controlled, and in effect nullified, by the 4th sub-sec. of section 19 of the Consolidated Railway Act, 1879, which says:—"*No person shall be a director unless he is a shareholder, owning stock absolutely in his own right, and qualified to vote for directors*

at the election at which he is chosen." The Special Act of incorportion says: —"*Unless he shall be the holder and owner in his own right, or as the trustee for any corporation.* The General Railway Act says:—*Unless he is a stockholder owning stock absolutely in his own right*—not having in it the additional words found in the Special Act, "*or as trustee for any corporation.*" Is the additional provision of "*or as trustee for any corporation*" to be added to the 4th sub-sec. of section 19 of the Consolidated Railway Act, 1879, in construing that clause? I have not a shadow of doubt that it is; and if it is so, there is no ground or room for argument as to the meaning of the section in the Special, and the clause in the General Railway Act, when read together; they state and mean that the qualification of a director in the M. S. W. C. Ry. Co. shall be, at the time of election, *the holding of not less than 40 shares, in his own right, or as trustee for any corporation, in the stock of the company. The qualification of the director is just as lawful and valid if the stock is held as trustee for any corporation as if held absolutely in his own right.*

If any confirmation of the conclusion at which I have arrived on this point were needed, it is to be found in section 2, sub-section 2, and sections 3 and 5 of the General Railway Act, 1879, as shewing most conclusively the subordination of the provisions of the General Railway Act to the enactments in the Special Act. Section two of the General Act says:—

"*The said sections* (from five to thirty four) *shall also apply to every railway constructed or to be constructed under authority of any Act of the Parliament of Canada, and shall, so far as they are applicable to the undertaking, and unless they are expressly varied or excepted by the Special Act, be incorporated with the Special Act, form part thereof, and be construed therewith, as forming one Act.*"

"*For the purpose of excepting from incorporation with the Special Act, any of the sections forming Part First of this Act, it shall be sufficient in the Special Act to enact, that the sections of this Act proposed to be excepted, referring to them by the words forming the headings of such sections respectively, shall not be incorporated with such Act, and the Special Act, shall thereupon be construed accordingly.*"

"*The expression the "Special Act" used in this Act shall be construed to mean any Act authorizing the construction of a railway, with which this Act or "The Railway Act, 1868," is incorporated.*"

From a consideration of the sections I have cited, and in short from a consideration of the whole scope, aim and intent of the Legislature in passing the General Railway Act, requiring in every case of incorporation a Special Act, which might expressly vary provisions in the General Act, or might except enactments in the General Act from application to the company created by the Special Act, to pursue the subject further, it seems to me, would be a violence and an invasion of common sense.

Another objection was urged against these same directors. It was said they were trustees for The Oregon and Transcontinental Company, admitted to be a corporation within the meaning of section 11 of the Special Act, which was and is the *cestui que trust* of the same directors; *and it is said*, as such *cestui que trust*, it can vote on the stock held by its trustees for directors; but instead of actually voting itself, it accomplishes the same thing by voting by its trustees, the directors in question; and having a contract directly with the company, it in effect is placing itself into the management of the affairs of the company in the shape of five directors,—Hammond, O'Brien, Cumming, Mead, and Clough, forming a quorum. For

the proposition that the *cestui que trust* can vote on his stock transferred to, and in the hands, of his trustee, counsel referred to Redfield on railways, p. 164. This was the only authority cited. I have not that treatise, and am, therefore unable to consult it. But in the case of this company, after examination of the Special Act and the General Railway Act, 1879, I am quite clear that no such power exists in the *cestui que trust*, after the stock has been duly and regularly transferred, and while it is duly and properly held by the trustee. I refer to "*shares and their transfer*," section 22 and sub-sections thereunder of the General Railway Act. The transfers must in form be absolute and unconditional, and the company is entirely relieved from seeing to the execution of any trusts, express or implied, and are bound to recognize the persons in whose names the shares stand in the books of the company as the absolute owners thereof for the purpose of voting and for all other purposes whatsoever. In re Stranton, &c., Co. L. R. 16, Eq. 559; Fender *vs.* Lashington, L. R. 6 Chy. D. 70; Pullbrook *vs.* Richmond, C. M. Co, L. R. 9, Chy. D. 620,

I must confess that a *cestui que trust*, having, as in the case of the Oregon and Transcontinental Company, an important contract with the railway company, and, by its trustees, having within itself the power of controlling the directorate of the railway company, is, on principle, very objectionable; and that the Legislature might well have provided against it. That the Legislature might have done so may be readily inferred from section 19, sub-sec. 16 of the General Railway Act, 1879. In substance, it seems to be in effect, though not in form or fact, within the mischief intended by that sub-section to be prohibited. The clause to which I have referred reads as follows:—

"*No person holding any office, place or employment in, or being concerned or interested in any contracts under or with the company, shall be capable of being chosen a director, or of holding the office of director; nor shall any person being a director of the company enter into, or be directly or indirectly, for his own use or benefit, interested in any contract with the company, not relating to the purchase of land necessary for the railway, or become a partner of any contractor with the company.*"

In this, however, and in all other cases, it is not for the Court to say what *ought to be*, but *what is the law*. Section 11 of the Special Act, as we have determined, declares that the holding of not less than 40 shares, *as trustee for any corporation*, shall be a sufficient qualification for a director; and the express enactment in section 11 in the Special Act, as we have also determined, must be construed along with section 19, sub-section 16 of the General Railway Act which I have quoted. Even if section 19, sub-section 16, in its terms, words and language, were manifestly contradictory of the Special Act, the latter must prevail. It, however, is not contradictory. It in no way, expressly or by necessary implication, declares that a trustee shall not be a director if the *cestui que trust* has a contract with, or is interested in, &c.

It follows that (what in effect has been already determined) that this objection affords no ground of disqualification of the directors Hammond, O'Brien, Cumming, Mead and Clough.

Having now disposed of the preliminary objections taken by way of demurrer *ore tenus* to the constitution of the plaintiffs' bill, as to matter and form, and to the qualification of the plaintiff-directors, Hammond, O'Brien, Cumming, Mead and Clough, I will now proceed to an examination of the

status of the plaintiffs, claiming to be the duly elected directors of the company, and of the title of *all* the plaintiffs to maintain this suit.

I shall first take up the transaction which was initiated and, apparantly, *arranged*, if not then fully consummated, at Welland, on the 5th day of July, 1881.

The Special Act incorporating the M. & S. W. C. Ry. Co. (42 V. c. 66) was obtained by the defendant, *Doctor Schultz*, on the 15th of May, 1879, who was then and is now a member of the House of Commons of Canada, and has always been the *chief leader, promoter and controller* in all the movements of that company. On the 17th of June, 1879, through Dr. Schultz, a meeting was held of the provisional directors named in the Special Act; an organization took place and stock-books were ordered to be opened for the subscription in shares of the capital stock of the company. Just one thousand shares were subscribed, and were so distributed, as is alleged, that the controlling power was in the hands of Dr. Schultz. It is alleged that 15 per cent. was paid on this 1000 shares; and, about December, 1879, a board of directors of the nomination of Dr. Schultz was elected by the shareholders. For some months thereafter, the directors seem to have been inactive, except doubtless, in applying whatever moneys that were paid in to the credit of the company, in the way of 15 per cent. on the 1,000 shares subscribed, "*in payments of all fees, expenses and disbursements for procuring the passing of the Act and for making the surveys,*" &c., according to the 7th section of the Act.

On the 25th of August, 1880, there was a meeting of the board of directors for the purpose of laying the foundation for the issue of mortgage bonds on the *proposed* line of railway, (of course there was not then any railway made); and to this end they procured another subscription of 1,000 shares of the capital stock and 10 % thereon was, as is alleged paid; but of this 1,000 shares all but a small number were subscribed by Dr. Schultz and his co-directors; and the board then allotted to the subscribers rateably and proportionably, 500 shares, in the whole, and marked them 10 % paid thereon, transferring the 5 % in excess of 10 % paid on the first 1,000 shares of stock subscribed, to and in payment of 10 per cent. on the 500 shares allotted—making as the board thought and considered, 2,500 shares subscribed and 10 per cent paid thereon, and laying, as they thought and considered, the basis for the issue of bonds, according to one of the conditions precedent, contained in the 15th section of the special Act.

It was alleged on the argument and not denied that, bonds were afterwards issued, and efforts made in England and elsewhere to negotiate and dispose of them, but without success; and, although Dr. Schultz and his co-directors had, from the 15th of May, 1879, to the 5th of July, 1881—over two years—incessantly made the most strenuous efforts to secure capital to go on with the construction of the railway contemplated by the Special Act, yet he found at the end of two years his company without a cent in the treasury--having expended all the money paid on subscribed stock ($25,000) *in the payment of fees, expenses and disbursements for procuring the passing of the Act,* &c.,—and under heavy liabilities, ($50,000) for debts incurred with no available assets, with nothing to show for the money expended or the debt incurred, except about 1100 feet of track laid, with scarcely any right of way procured, or plant to use or materials for construction—in short the company on the verge of a *collapse*.

In this state of affairs *Dr. Schultz* and his *co-directors, Bown, McGregor, Murdoch* and *Kemp*, who (except Kemp) with Dr. Schultz as chief,

are now defendants in this suit, as directors of the company, on the 5th of July, 1881, held a board meeting at the Dexter House in Welland, in the county of Welland, in the Province of Ontario, and opened up negotiations with one Pew, another of the defendants, acting for certain capitalists in New York, and came to a specific arrangement with him, so acting as I have mentioned, whereby the company was to assign, transfer and deliver to Pew in trust for the New York capitalists, the residue of the unsubscribed capital shares of the company, of 7,500 shares, to be marked and inscribed "paid and unassessable," and the mortgage bonds on the line of railway and undertaking to the extent of $6,240,000; and whereby also the 2,500 shares of the so-called original stock should be transferred to Pew on the like trust (being the shares on which 10 per cent. had been paid), provided the holders thereof assented thereto, on receiving from the New York capitalists 4-5 in quantity in stock of the class of the 7,500 shares "paid and unassessable;" and whereby in consideration whereof, Pew, on behalf of the New York capitalists, undertook and promised that the New York capitalists should and would build the railway and equip the same—with all the necessary sidings, switches, turnouts, stations, water-tanks, &c., according to plans and specifications—from Winnipeg to La Roche Percée—the first 50 miles from Winnipeg West, to be completed on or before the first of June, 1882, and railway service once a day to Nelsonville, on or before the first of Feb., 1882, &c. (See exhibit A set out in the plaintiffs bill of complaint for a full statement of this agreement.) This agreement is evidenced by the signature of Pew and that of David Kemp, as director and secretary of the company who signs in his official capacity as secretary. The contract was made at Welland about the 5th of July, 1881. It was to be immediately executed or performed on the part of the company, in *consideration of the undertaking and promise above* by Pew, on behalf of his New York principals, to perform and execute the agreement on their part, *at future stipulated periods.*

A full account of this board meeting is contained in the minute board book, page 175. I particularly call attention to the explanations as to the necessity and advisability of entering into this arrangement with Pew which the company acceded to, as inscribed in these minutes, and which I have summarized very briefly. At the same meeting it appears, A. M. Sutherland's resignation of director was accepted and Pew appointed a director in his place, and made vice-president and managing director of the company. The minutes are signed by Dr. Schultz as president, and David Kemp as secretary of the company.

They went farther. They passed a resolution not only that the proposition of Pew be accepted, but also that "the president and secretary be instructed to issue of that date, to Pew as trustee, 7,500 "paid and unassessable" shares of the stock of the company (that being the residue of the unsubscribed shares and the whole capital shares, except 2,500 subscribed and called "original shares or stock," as a partial fulfilment of the arrangement made with Pew, for the construction and equipment of the M. and South-Western Colonization Railway.

The next meeting of the board of directors was held in Winnipeg the 18th July, 1881, and there were present Dr. Schultz, J. H. Ashdown, W. N. Kennedy, R. L. McGregor, W. R. Bown and David Kemp, also secretary as well as a director. The minutes of the board meeting at Welland on the 5th July were read and approved. "It was moved by W. N. Kennedy, and seconded by J. H. Ashdown and resolved—that all the acts done at the said meeting

at Welland, Ontario, as recorded in the minutes, be hereby ratified and confirmed; and all the resolutions mentioned in said minutes as passed at said meeting are hereby passed and re-enacted as the resolutions of this meeting."

The proposition of Mr. E. A. C. Pew to the company to build the road, read as follows—(then follows inscribed in full in the minutes the proposition of Pew to the board of directors at the board meeting at Welland on the 5th July, 1881, and in like manner inscribed in the minutes, the reply and acceptance of Pew's proposition by the company, with some slight modification, and Pew's assent thereto.—(See exhibit A set out in the plaintiffs' bill of complaint, and also board minutes of meeting of 18th July, 1881.)

Several meetings of the board of directors were held between the 18th of July, and the 24th of August. On the 24th August a regular and duly convened board meeting of the directors was held, and it was amongst other things, moved, seconded and resolved—"that the president (Dr. Schultz) and the secretary be authorized to sign and seal series A of the bonds of the company and deliver them to Mr. Pew."

At meetings of the board of directors held about the month of October, and the forepart of November, 1881, from the minutes of the proceedings as recorded in the minute book, I gather that the New York capitalists with the full consent and approbation of the company, had transferred their contract with the company, with all its incidents and accidents, and everything pertaining thereto, to a corporation called "The Oregon and Transcontinental company," with which the railway company, after discussion and consideration, formulated a contract embracing the particulars and stipulations to be observed and performed by the railway company and New York capitalists respectively, contained in the proposition of Mr. Pew and accepted by the railway company—(see exhibit A)—by which the railway company again in the strongest manner possible, ratified and confirmed all the proceedings at the Welland meeting on the 5th July, and consummated the whole by the contract with the Oregon company with which the railway company dealt, and took in substitution for the New York capitalists, and with which the railway company about the middle of October, 1881, executed under their corporate seal by Dr. Schultz as president, and General Hammond as secretary, a formal contract, and delivered the same to "The Oregon and Transcontinental company." (See Exhibit B.)

Under resolutions of the railway company, the railway company has, in performance of the contract on its part duly and effectually transferred the 7,500 shares of the "paid and non-asssessable" stock, and delivered over its $6,240,000 of bonds; and the Oregon and Transcontinental company has already paid away well nigh $1,000,000, (upwards of $850,000) in works of construction, ties, steel rails and plant, and has already completed, now, upwards of 35 miles of railway, and is prosecuting the work of construction with all practicable vigor and despatch.

We have before us a contract which appears to have been entered into in good faith on both sides, and to have been repeatedly ratified and confirmed and incessantly acquiesced in on the part of the railway company by its directors, after mature and deliberate consideration, and at the general annual meeting on the first of Feb'y, 1882, distinctly ratified by the whole body of shareholders without a dissenting vote. It is not even suggested that there was or is any fraud, deceit or over-reaching in the whole transaction. Neither is it suggested that the work of construction is not being well and properly done and with reasonable expedition, or that any stipula-

lation made by the New York capitalists or the Oregon and Transcontinental company has, in word, or according to the meaning, intent or understanding of the railway company, been broken.

But several objections are raised as to the validity of this whole transaction.

1st. It is said it is void *ab initio* because it is *ultra vires*.

2nd. It was and is illegal, because certain formalities pointed out in the statute were not complied with; and therefore, the transfer of the 7,500 of unsubscribed stock is void; and, I suppose, the mortgage bonds, although actually delivered, are void.

Much time was spent by counsel for the defendants in the argument, to show that as a rule, an act done by a railway company which is *ultra vires* is void, and can not be cured or made legal by any amount of ratification, confirmation and acquiesence of even every shareholder; and numerous cases were cited in support of this plain and manifest proposition of law—as *Richie v. The directors of the Ashbury Ry. carriage and iron Co., (limited)*, L R. 7, H. L. 653; *Richmond's case and Painter's case*, 4 Kay v. Johnson, 305; *Coleman v. Eastern Counties Ry. Co.*, 10 Beav. 1; *Eastern Anglican Ry's Co. v. Eastern Counties Ry. Co.*, 11 C. B. 775; *Solomons v. Laing*, 2 Beav. 339; *Bagshaw v. Eastern Union Ry. Co.*, 7 Ha. 114; *Shrewsbury, &c., Ry. Co. v. London & North-Western, &c., Ry. Co.*, 22 L. J. chy. 682; *South Yorkshire Ry. and River Dun Co. v. Great Northern Ry. Co.*, 9 Ex. 55; *National Manuer Co. v. Donald*, 28 L. J. Ex. 185; *Eastern Counties Ry. v. Hawkes*, 5 H. L. C. 348; *Bostock v. North Staffordshire Ry. Co.*, 4 El. & Bl. 798; *McGregor v. Deal & Dover Ry. Co.*, 18 Q. B. 618; *Taylor v. Chichester and Midland Ry. Co.*, L. R. 2, Ex. 357–4 H. & C. 409; *Simpson v. Westminster Palace Hotel Co.*, 6 Jur. N.S., 985. I might go on almost to any extent citing cases all in the same line of decision, both in this country and the United States.

Now "*ultra vires*," or as Lord Chancellor Cairns, in the case of Richie v. Ashbury Ry. Carriage &c., Co., for the purpose of emphasis, and to distinguish it from the term of "illegality," calls "*extra vires*," in a corporation is an act or course of procedure entirely beyond the scope and objects of the express or the fair and reasonably implied powers conferred by the legislature upon that corporation; and no amount of ratification, confirmation or acquiescence of the directors, or even every shareholder, in the act or procedure, can make it *intra vires*; as to all the world, the company, directors, shoreholders and every other person, it is an act or procedure without any legal support; it is a naked illegality. It is contrary to public policy simply because it is not authorized by the will of the legislature as expressed in the Act creating the corporation. It may not be *mulum prohibitum*, or *mulum in se*; it is nevertheless without legal basis and is utterly void *ab initio et ad finem*.

A good deal of confusion seems to have existed in the minds of counsel for the defendants, in respect of the proper and the appropriate application of the term *ultra vires*. An act is properly said to be *ultra vires only* when it is not within the scope of the powers of the corporation to perform it *under any circumstances* or *for any purpose*. An act done by a corporation with reference to the rights of certain parties, when the corporation is not authorized to perform it without their consent; or with reference to some specific purpose when it is not authorized to perform it for that purpose, although fully within the scope of the general powers of the corporation, with the consent of the parties interested or for some other purpose,

is not, properly speaking, *ultra vires*. The act in the first case supposed is generally, if not always, void *in toto*, and the corporation may avail itself of the plea. But in the second case supposed, "the right of the corporation to avail itself of the plea will depend on the circumstances of the case. When the act in question is one which the corporation is not authorized to perform under any circumstances, the defense is available to the corporation against all persons, because they are bound to know from the law of its existence, that it has no power to perform the act"; but when the act itself is authorized to be done in a particular way or manner, or on some precedent act or conditions, or for some purpose, but not for others, the defence may or may not be available, depending upon whether or not the party dealing with the corporation is aware of the *intention* of the corporation, to perform the act in a manner different from that prescribed by the Act of incorporation, or in disregard of the precedent conditions or the purposes for which it should be performed, or of circumstances not justifying its performance. And the test, as between strangers having no knowledge of these matters, as to the *intention* of the corporation, is to compare the terms of the contract with the provisions of the law from which the corporation derives its powers; and if the court can see that the act performed or to be performed is necessarily beyond the powers of the corporation for any purpose whatsoever, the contract is void—it cannot be enforced—otherwise it is binding, and can be enforced. The confusion I spoke of has arisen from a want of discriminating that class of cases in which ratification, confirmation and acquiesence cannot take the act performed or to be performed out of *ultra vires* or *extra vires*, and that class of cases in which contracts are made or agreements entered into within the scope of the corporate powers of the corporation—*intra vires*, but irregular or informal, in the manner in which the contracts are made or the agreements entered into. In one and a legal sense the former concerns the corporation and the public alone—the latter the *individual members* of the corporation. The body of shareholders is not the corporation. Now it is manifest that any body of men—as the shareholders in a company—may, in the name of the corporation, in a collective body, do any act that is *intra vires* of the corporation. In so far as they themselves are concerned the *manner* of doing it may appear to be important or otherwise to themselves. The manner of doing it, as between themselves, with which third parties have nothing to do, is merely directory and may be pursued or not, as they think advisable. *Modus et conventio vincunt legem.* There is no doubt that when an association, comprising the entire shareholders in a given enterprise, takes the form of a corporation, and all or a majority of them concur in a given act within the scope of the powers of the corporation, they can legally do that act, though informal in the manner in which it is done—especially if the informality is pointed out and they are aware of it, and designedly waive it; or not being aware of it at the time of the act, but after being made aware of it, subsequently acquiesce in, or formally ratify and confirm the act.

I have made these observations preparatory to the stating of what I have regarded as the most formidable objection to the transaction and contract made at Welland on the 5th July 1881, and the subsequent contract made at Winnipeg with "the Oregon and Transcontinental Co." about the 14th October 1881. (See exhibits A & B.) The objection is based upon and arises under the heading of the General Railway Act of "*General Provisions*," sec. 28, sub-sec. 5, which is as follows:—

"No contracts for works of construction or maintenance of the railway, except works of ordinary repair, or immediate necessity, shall be entered into until after tenders of such works respectively, have been invited by public notice therefor, given for, at least, four weeks, in some newspaper published in the place nearest to that at which the work is required to be done; but the company shall not be compelled to accept any such tender." This formality seems rather *imperative* than *directory*; yet, as any one, on a moment's reflection will see, by the last clause, *"but the company shall not be compelled to accept any such tender,"* the force of the whole provision is rendered inefficacious and ungatory for any purpose whatever, except an advertisement and a period of delay of four weeks.

It may be questioned whether the arrangement made at Welland with Pew acting for the New York capitalists, and the agreement subsequently made with the Oregon and Transcontinental Co. are strictly speaking within the perview of section 28, sub-section 5 of General Railway Act, 1879. It would seem, on closely examining this arrangement with Pew and this agreement with the O. & T. C. Co., that the sub-section in question was not intended to be, nor would it or could it be, applicable to them or either of them. The sub-section of the Act in question was in no sense intended as a protection to the public; it was intended as a direction to protect the constituent proprietors in the railway company, who alone, as it seems to me, could take exception to the agreement and contract I have mentioned, and who, if they desired to do so, must have been prompt, and not permit strangers and innocent parties, dealing in good faith with *de facts* directors, to assume that the railway company had power to deal with them as it did, and acting on that assumption, to expend large sums of money and incur heavy liabilities; otherwise, their acquiescence alone would operate as an estoppel to any objection as to irregularly or informality, by way of commission or omission, in the making of the arrangement at Welland or entering into the agreement at Winnipeg. Moreover there was the most urgent reason for expedition. Two years and two months had elapsed since the passing of the Special Act; the trifling sums paid in on shares had been all exhausted; every effort had been made to float the bonds at any sacrifice, in vain; no one ever, even conjectured that the venture was, as a property, of any value; the company was $50,000 and upwards in debt, with not a dollar in the treasury, and no assets whence money could be derived or expected; in short the existence of the company, as I have already said, was on the verge of a collapse—the proposition by the New York capitalists, on viewing the whole situation, was, in my opinion, better than could have been got from any other source, and better than *they* would have offered, had they not been interested in other lines of railway with which the railway of this company might form a connection. They said—"We will take this railway enterprise off your hands with all its debts, "but we must control its franchise and be masters of the situation, and of "the property which shall be made and produced by our money in con- "structing and equipping the railway. We must have the 7,500 unsub- "scribed shares of the capital stock, and the 2,500 shares of the subscribed "stock on which it is alleged 10 per cent. has been paid, and we will pay "you back this 10 per cent. in cash and in addition we will give you back, "in quantity, 4-5 of this stock in paid up and non-assessable stock of the "class of the 7,500 shares of stock, so marked, which you are to transfer to "us. We must have your first mortgage bonds, not that they are worth "any thing *now*, but they may be worth something after we shall have built

"and equipped the railway; and at all events the bonds in our hands will "enable us to protect the property we shall have created with our money "from interference by other parties into whose hands otherwise the bonds "may fall. We, in fact, buy you out—true, you have nothing to sell, except "your franchise, which we are afraid is worth nothing—nevertheless, we "buy you out, and give you $25,000 in cash for your stock and 2,000 shares "marked paid and unassessable stock back for nothing, and assume your "$50,000 and upwards of debts of the railway company." I repeat, the matter was urgent, as under section 28, sub-section 6, of General Railway Act and section 26 of the Special Act, the company, in addition to all its other difficulties, was on the eve, by failure to go on with the construction of the railway, and by lapse of time, of forfeiting its charter.

In reviewing the whole history of the company, I think the arrangement made at Welland, on the 6th July, 1881, and the subsequent contract with the O. & T.C.Co., at Winnipeg, on the 14th of October following were, in its then and prospective state, wise and provident; and I am not at all surprised, when the facts were fully explained to and understood by several subsequent meetings of the board of the directors; they acquiesced in, ratified and confirmed all that had been done; and ordered that the whole arrangement should, in good faith, be carried out, and that the contract with the O. & T. Co., should be executed by the railway company under its corporate seal,—all which was done. The bonds were delivered; the stock was transferred; the $25,000, 10 per cent. on the 2,500 shares of subscribed stock was paid, and four-fifths in quantity thereof, of the class of paid and non-assessable stock, was delivered and accepted by the various subscribers or holders of the 2,500 shares of subscribed stock on which 10 per cent. had been paid; and the O. & T. C. Co., immediately went on in performance of the contract on its part and have already expended upwards of $850,000 thereon, and are prosecuting the works, even in the inclement season of the winter, with the utmost vigor and despatch. The arrangement and contract on the part of the railway company has been fully executed and performed in all things; and after all this, the whole body of shareholders, at the general annual meeting, held on the first of February, 1882, on full examination of the whole subject, without a dissenting voice approved, ratified and confirmed the entire transaction from the beginning to the end. In my view, it does not need any, but I cite a few cases as bearing upon ratification: *Wilson vs. West Hartlepool Harbour and Ry. Co.*, 1 De. D. J. & S. 475; *Williams vs. St. George's Harbor Co.*, 2 De G & J. 547; *Phosphate of Lime Co., vs. Green*, L. R. 7, C. P. 43; *Irvine vs. Union Bank of Australia*, L. R. 2, appeal cas. P. C. 366; Taff Vale Ry. Co., *vs.* Macnabb, L. R. 6, H. L. 169; Renter *vs.* Electric Telegraph Co., 6, E. & B. 341; Royal British Bank *vs.* Turquand, 6, E. & B. 327, 332; Athenacun Life Assnt. Co., *vs.* The Eagle Insurance Co., 4, K. & J. 549; Browing *vs.* The Great Central Mining Co., 5, H. & N. 855; Bickford, The Grand Junction Ry. Co., 1, Supreme Court, 696.

I repeat, the full consideration on the part of the railway company has been, for some time, paid and delivered to the other party, and the consideration has been fully executed; and the other party has gone on, with all possible speed in the execution of the contract on its part; and it is manifest that the *vocation* of this contract, in its present condition, would be most disastrous to the whole railway enterprise, in which the public, at large, aside from private individuals, has a deep interest—would be the disruption of the very existence of the railway company, and would be most

ruinous to the Oregon and Transcontinental Company and to the capitalists who support that company.

The transaction is in no sense *ultra vires*; it is eminently *intra vires*. I refer to sections 2 and 15 of the Special Act, and to sections 7, sub-sections 1 to 20 inclusive, under the general head of "Powers," and to section 20, sub-section 12, of the General Railway Act, 1879. Of the Special Act, section 2, and of the General Railway Act, section 7 sub-sections 1 to 20, give the most ample powers of construction; and section 15 of the Special Act gives power and authority to issue bonds and to apply them or their proceeds in construction and equipment of the railway; and section 20, sub-section 12 of the General Railway Act gives the most illimitable power so to apply the unsubscribed shares in the words following: "*The directors may sell, either by public auction or private sale and in such manner and on such terms as to them may seem meet, any shares so declared to be forfeited, and also any shares remaining unsubscribed for in the capital stock of the company, or pledge such forfeited or unsubscribed shares for the payment of loans or advances made or to be made thereon, or of any sums of money borrowed or advanced by or to the company.*"

The directors are empowered to dispose of the forfeited and unsubscribed shares in such manner and on such terms as to them might seem meet for the purpose of accomplishing the objects of the incorporation—the construction and equipment of the railway authorized to be built by the Special and General Acts; and for that purpose the stock has in due form of law, been transferred on the books of the company, "paid and unassessable," and delivered and accepted, and bonds have in like manner been issued in due form of law, and delivered and accepted. The very purpose, object and intent in doing this was and is the carrying out and accomplishment of the chief end of the Act of incorporation. There cannot be a shadow of doubt that the Acts were within the scope of the corporate powers of the company.

In construing this clause it is to be observed that it contains the concession of two distinct classes of powers—one to sell the shares by public auction or *private* sale in such manner and on such *terms as to them may seem meet*, (as constructing the railway or for any other purpose within the corporate powers of the company.) The manner of sale and the *terms* of sale are left discretionary with the company, provided they be within the scope of objects contemplated by the Act of incorporation. The others are not so apparent as being within the scope of the powers of the company, and hence the expression "or pledge, &c., for the payment of loans or advances, or sums of money advanced by or to the company." There are two distinct propositions in the clause, the one is general, the other limited.

Therefore, I think it impossible for the court to hold that the transaction or act objected to is void for being *ultra vires*, or under the facts and circumstances stated, illegal, by reason of the want of previous notice inviting tenders.

I think the holders of that stock (7,500 shares) are entitled to all the privileges and immunities of legal stockholders in the company.

It is proper here to make an observation upon a contention in this connection made by counsel for the defendants. It was contended that at the several meetings of the directors at which this transaction was ratified and confirmed, it was not shown that notice of the meetings had been duly given, or that *all* the nine directors were present; and they instance the meeting of the 9th Nov'r, 1881, at which were six directors—three being absent—and it was admitted that the absent directors, Pew, Stokes and

Howell, had not notice. All directors should in some way, if practicable, have notice of meetings, to make their acts valid, not as to third parties and strangers who deal with the board as *defacto*, legally convened and properly the board of directors, but as between themselves. But in the absence of evidence to the contrary, I must assume that every meeting of directors which professes to be a properly constituted and lawful meeting, is so, and all resolutions professing to be passed at such meeting, are lawfully passed. In this case the maxim applies—*Omnia præsumuntur rite et solenniter esse acta, donec probetur in contrarium.* On the discussion of counsel of this matter, it turned out that the three absent directors had all sent in their resignations which were accepted at that meeting, and that they were abroad, Pew in Ottawa, and Stokes and Howell in New York. One of the counsel for defendants, I think, cited *Smyth & Darley*, 2 H. L. C. 803, in support of his contention. But I find on examining that case, that being beyond summonsing distance, as for instance out of the country or abroad, is sufficient excuse for omitting to summon. The authority of that case justifies the dispensation with notice to Pew, Stokes and Howell, of the board meeting of directors on the 9th Nov'r, 1881, to which objection was made.

The next objection of counsel for the defendants is to the validity of the transaction of the subscription of 500 shares by Mr. Adams at the board meeting on the 10th of November, at Winnipeg, to which I have already referred, and which is fully set forth in the 12th paragraph of the plaintiffs' bill of complaint.

Mr. Adams is one of the New York capitalists. He was in Winnipeg, looking after the interests of himself and associates, and learned for the first time how Dr. Schultz and his co-directors had made up the 2500 shares of subscribed stock, with ten per centum paid thereon, which I have already described, as the basis for issuing the bonds. It was, to say the least, an evasion of the statute. (See Section 15 of the Special Act.) To remove any doubts on this score, as he and his associates were deeply interested in a correct basis on which the issue of the bonds might rest, in effect, presented or made a present to the board of directors of scrip for 500 shares of the capital stock of the company, of the class of 7,500 shares of unsubscribed stock which had been transferred and delivered to him and his associates in pursuance of the arrangement with Pew, which was by Dr. Schultz and his co-directors accepted and cancelled, and he paid $5000, 10 per cent. on 500 shares, in cash, into the treasury of the company, and took a scrip under the seal of the company, signed by Dr. Schultz as president and General Hammond as secretary, for 500 shares with 10 per cent. paid thereon; and proper entries were made in the books of the transaction. Now it is said by the *real defendants, as Dr. Schultz &c.* that this transaction is void; and in support of this contention reference is made to section 22, Sub-section 6 of the General Railway Act, which says: — "*The funds of the company shall not be employed in the purchase of any stock in their own or in any other company.*"

One is at a loss to conceive any imaginable excuse for such conduct on the part of the *real defendants* who were consenting parties to this transaction, unless it be to do as much damage as possible by casting discredit on the bonds; for in effect, it was simply a present—a gift to the company of $5000!

I shall say nothing more in respect of the objection to this being a good and legal subscription of 500 shares of stock, with ten per centum paid thereon; I do not feel it safe in trusting myself to do so

If this 500 shares is added to the 2,500 on which 10 per cent. was paid, according to Dr. Schultz and his defendants, it will make 3,000 shares of subscribed stock and 10 per cent. paid thereon—if it be subrogated in the place of the 500 allotted shares on which nothing was, in fact, paid, it will still leave the 2,500 shares with 15 per cent paid on 1,000, and 10 per cent. paid on 1,500. In either view, there is a correct basis for the issue of the bonds, according to the statute. (See section 15, Special Act.)

The *real defendants* of whom Dr. Schultz is the head and chief, prior to the annual meeting of the first of February, 1882, conceived the idea of controlling the election of directors at the annual general meeting of shareholders; and to this end, they found it necessary, in some way, to invalidate the 7,500 shares of unsubscribed stock transferred to Pew in trust for the New York capitalists, and by Pew transferred, by direction of the New York capitalists, to and held and owned by various parties. Hence the attack on the arrangement, as it is called, with Pew, at Welland on the 5th July, 1881, and on the contract or agreement, under the seal of the company, executed by Dr. Schultz as president, with the Oregon and Transcontinental Company of the 14th October, 1881; and with the same end in view, they saw that it was necessary to invalidate the 500 shares subscribed by Adams on the 19th of November, 1881; and hence the attack on that stock, and the effort to displace it from the class of subscribed stock, on which ten per cent. had been paid, and to include it within the category, or make it a part of, the 7,500 shares of unsubscribed stock transferred, under the Pew arrangement, which they contend, for the reasons already given, was and is invalid. This would leave the 2,500 shares of the subscribed stock with 10 per cent. paid thereon, to make up the full capital stock of 10,000 shares; and of this 2,500 shares, the *real defendants* claim they held a majority, (1,481 shares), and had a right to control the election of directors at the annual meeting on February the first. True, the attainment of this end, by the proposed means, would be a violation of all faith, all honor, all law, all justice and all right; and would prove ruinous and disastrous to the railway enterprise and to the very existence of the company; but this seemed a matter of no moment to the *real defendants*—their motto seems to have been, that it was better to rule in hell than serve in heaven.

Now, assuming for a moment that the 1481 shares that Dr. Schultz and his co-*real defendants* claim to control is all of the class of the 2,500 subscribed shares, on which 10 per cent. has been paid, and that that class of stock is the only stock which can be voted on; had they a majority of that class of stock? It is asserted in the bill and verified by affidavit, and not contradicted by Pew though a party to the suit, and although he was present during the argument and had every opportunity of denying it, if incorrect—nor was it in fact denied by counsel on the argument—that of these 1481 shares, 308, of which Pew professed to be the holder of, must be struck out, as Pew was the conduit pipe only by which they were to pass to the New York capitalists. From the evidence before the court and from the absence of any denial of the allegations in the bill, by Pew, by affidavit or otherwise, I must take it that the allegations in the bill in respect of this 308 shares of stock are true, and that they must be struck out of the list of the party defendants; and this will leave Dr. Schultz and his party but 1173 shares, a minority of the 2,500 shares on which 10 per cent. had been paid, and on which, as he and his co-defendants contend, there only, could have been voting at the annual meeting; if the 500 shares of Adams were added to the 2,500, it would leave him and his party in a minority of 1173 to 1827;

if the 500 shares of Adams be subrogated in the place of the 500 shares allotted, and displace them, we would have to diminish 1173 by 1-5, which would leave the defendants in a minority of 938 to 1,593; whether, therefore, Adam's 500 shares be excluded or included, in any manner, put the matter as you may, the defendants and their party were in a minority, without taking into consideration and count the fact that there was not transferred back to the holders of the 2,500 shares of stock which had been originally subscribed and 10 per cent. paid thereon, but four-fifths of the quantity thereof.

But the New York capitalists knew that the only effectual security they could have for their money was the perfect and entire control of the franchise, and they stipulated that the original stock, the 2,500 shares subscribed, with 10 per cent. paid thereon should be transferred to them; and as these shares were in the hands of private persons over whom the company had no control, so important did they deem the matter that they stipulated to pay each holder what he had paid thereon, and transfer to him four-fifths in quantity of stock, which must be presumed to have been intended not of the same class of stock as that transferred to them, but of the class of the 7,500 shares of paid and unassessable stock. It seems to me in the nature of things this must have been the intention of the parties. To suppose otherwise, would be irreconcilable with common sense; paragraph 7 of the plaintiffs' bill in its several clauses distinctly and concisely sets forth this transaction. In the last clause of paragraph 16 of the plaintiffs' bill, it is distinctly stated that the 2,500 subscribed (original stock) were all but 308 shares in the hands of Pew tor the New York capitalists, included in the 8,519 shares and were held by the plaintiff-directors and their party, and the votes on it were all cast for the directors who are now plaintiffs, except Mr. Wood, who although elected by the same vote of 8,519, had resigned before the filing of this bill. The whole tenor of exhibit A is in the same line of meaning, and were it not that not anything seems in the estimation of Dr. Schultz and his co-defendants to work an entoppel to him and his co-defendants, the agreement signed by him under the seal of company, exhibit B, would seem to be conclusive of the whole controversy: in the last clause of which are these words—"and will accept from any of the sub-"scribers or holders of the $250,000 stock upon which the ten per cent has "been paid, such amount thereof as they may desire or be willing to trans-"fer to the said Oregon company, and will assign and transfer to the said "shareholders so transferring the said stock, respectively, an equal amount "of paid up and unassessable stock of the said company;" and lastly are the allegations in the bill of complaint and the affidavit verifying the same, and the cross examination and direct examination before the master on the affidavit of verification, and the Exhibits, as the minute book, the stock book and the transfer book, all in accord, as to the class of stock and as to the quantity to be given each shareholder, besides the full amount paid on the stock on each transferring his stock. It is so absurd to suppose that the New York capitalists would pay the full amount paid on the stock for one-fifth of the stock, by taking a transfer of the whole stock and immediately transferring back four-fifths of it, or that the holders would ask or expect it, that I have not patience to discuss such an irrational proposition. But the question is concluded by evidence on the part of the plaintiffs, to which neither Pew, who must know all about it, besides Dr. Schultz, Bown, Kennedy, Murdoch and McGregor, have not, nor have any of them even ventured a denial.

The New York capitalists paid in cash to the holders of this stock $25,000, and took a transfer of the stock. They did more, they gave back to each shareholder four-fifths in quantity of the class of the 7,500 shares of unsubscribed stock previously sold and transferred to them by the company, marked—paid and unassessable—2,000 shares in all!

Now these defendants, with *Dr. Schultz* as their *Chief* who have not one cent of pecuniary interest in the railway enterprise and venture, not one cent of pecuniary interest in the stock or property of the company, by reason of holding stock which was given them for nothing—these gentlemen, as a mark of gratitude I suppose, serpent-like, are attempting to sting the bosom that warmed them into life.

The stock which the defendants held on the first of February, 1882, was all of the class of the 7,500 shares unsubscribed, transferred to the New York capitalists or to Pew for them, and transferred to the individual shareholders on their transferring their respective subscribed shares to the New York capitalist, or to Pew for them.

What is the logical result? If the contention of the defendants as to the Welland transaction prevails, they have not only invalidated the 7,500 unsubscribed shares transferred to the New York capitalists or to Pew for them, but also their own stock which is a part of the same 7,500 shares; and in that case they cannot have any *legal interest* at all in this company. I have already shown that they have *no pecuniary interest.* They had no business or right to be at the annual meeting at all. The have no *locus obandi* before the Court.

But I do not take this view of the case. I feel disposed, if the law will permit it, and I think it does, to protect the defendants against the madness of themselves.

I think the defendants held or controlleed 1,481 shares, less 308 shares held by Pew for Villard and his associates in New York; and that they had the right at the annual meeting, according to law, individually, to cast their votes one way or the other, on all questions before the meeting; and I think on the other hand the individual plaintiffs, as a party opposed to the party of the defendants, held or controlled 8,519 shares; and that they had the right, at the annual meeting, according to law, individually, to cast their votes, one way or the other, on all questions before the meeting.

After careful examination and consideration, I am disposed to adopt the account given of the general annual meeting of the shareholders for the election of directors and for other purposes, in paragraphs, 13, 14, 15, 16. and 17, of the bill of complaint. Its accuracy has not been controverted by affidavits filed on behalf of the defendants, or shaken by cross-examination of General Hammond; nor, as I understand, was its substantial correctness and truthfulness denied by counsel for defendants, on the argument.

By paragraph 18 of the bill of complaint, it appears Mr. Wood resigned his position of director of the company on the 6th February, before this bill was filed, and the plaintiff, James R. Sutherland, was chosen in his place.

I find that *John H. Hammond, Hugh Sutherland, James H. Ashdown, George Brown, Robert E. O'Brien, Charles V. Mead, George M. Cumming, William P. Clough,* and *Edmund M. Wood,* (for whom James R. Sutherland on his resigning was, on 6th February, by a vote of the directors substituted,) were at the general annual meeting of the shareholders held at the company's office in Winnipeg, on the 1st of February, 1882,

duly and lawfully by a majority of the votes of the shareholders then and there given, elected and chosen directors of the company for the year then next ensuing; and I declare them to be such directors; and I find that *George H. Adams, Artemas W. Holmes, Thomas F. Oakes,* and *Anthony J. Thomas,* are, respectively, shareholders in the capital stock of the company, and as such have a joint interest with the company and its directors in maintaining this suit; and that both the directors and the shareholders, along with the company *may,* not *must,* be parties to a suit of this kind, *at least, in so far as a motion of this kind is concerned.* If at the hearing of the cause it is thought by the Court advisable, the names of George H. Adams, Artemas H. Holmes, Thomas F. Oakes, and Anthony J. Thomas, may be struck out. On this motion I see no necessity for it.

But it is objected that the election of directors is void, because Ashdown and Hammond along with Mr. Biggs, acted as scrutineers of votes cast for directors of the company, while at the same time Ashdown and Hammond were put in nomination and were voted for, for directors; and the case of *Dickson vs. McMurray,* 28, Gr. 533 is cited in support of the proposition.

I know not the precise provisions as to voting in the charter-patent in *Dickson v. McMurray,* but I assume them to have been the same as they are in most joint stock companies. In the case before me, the provision for the shareholders voting at general meetings for directors and on all other questions brought before them, as well relating to organization as otherwise, is as follows :

The number of votes to which each shareholder should be entitled, on "every occasion when the votes of the members are to be given, shall be in "the proportion of the number of shares held by him, unless otherwise pro- "vided by the Special Act."

"All shareholders, whether resident in Canada or elsewhere, may vote "by proxy, if they see fit; provided that such party produce from his con- "stituent an appointment in writing or to the effect following, that is to "say: I, of one of the shareholders of "the do hereby appoint of "to be my proxy, and in my absence to vote or give my assent to any busi- "ness matter or other thing relating to the said undertaking, that may be men- "tioned or proposed at any meeting of the shareholders of the said company, "or any of them, in such manner as he, the said thinks proper. "In witness whereof I have hereunto set my hand and seal the "day of , etc."

"The votes by proxy shall be as valid as if the principals had voted "in person; and everything proposed or considered in any public meeting "of the shareholders, shall be determined by the majority of votes and "proxies then present and given, and all decisions and acts of any such "majority shall bind the company, and be deemed the decisions and acts of "the company."—Sec. 18, sub-sec. 6, 7 & 8, Railway Act.

Now assuming that the corporation in question in *Dickson v McMurray* had any such provisions in its patent charter, as I presume it had, when the erroneous election of chairman, at the very inception of the meeting, and also the erroneous election of scrutineers, and the decision of the scrutineers as to the right to vote on stock alleged to be held in trust and other matters, are considered, I am not at all surprised at the decision at which the learned Vice-Chancellor arrived; it was fully warranted by the premiers; but I cannot concur in his *ratio decedendi.*

In every meeting of shareholders, every shareholder has a right to be present to the exclusion of all other persons. Every shareholder is eligible to any position or office to which he may be elected in any such meeting if duly qualified according to law—no matter what temporary position or office he may fill or hold in the meeting, as—chairman, secretary, scrutineer &c. This is a *right* secured to him by the statute and cannot be taken from him by the arbitrary *dictum* of any judge or court.

The word "scrutineer" is not a legal term. It is of comparitively recent introduction as applicable to the inspectors or examiners or counters of votes at meetings. Such functionaries are generally appointed when the voting is by ballot. In open, *viva voces* voting from a settled and certified list of the voters as was done in this case, scrutineers are supernumerary. In the present case they are unknown to the law; and they in no manner interfered with or intervened in the election, and their duties were perfunctory. As was explained and not denied on argument, the voting was open, and uniform for the same persons for directors to the extent of 8519 shares—the voters' names and number of shares being called from a stock list duly certified by the secretary of the company; and not in a solitary instance had the chairman and secretary of the meeting occasion to call in requisition the judgement of the scrutineers—no dispute or question arising; and it was not even suggested on the argument that there was any error or mistake or fraud or undue influence made use of or exercised in or about the election. If any such matter were charged, as was in *Dickson v McMurray* then the fact that the scrutineers, inculpated in this improper action were nominees and candidates for election for directors, and would be affected in their election, as their decisions as scrutineers were one way or the other, would be an important element and factor in considering the bias or impartiality of their decisions. But no case is suggested for the introduction of this element or factor. I find no authority supporting the *ratio decèdendi* of the learned Vice-Chancellor; and I cannot, under the law of the land and facts applicable to this railway company, follow it. I think in this case the exception taken is no valid objection to the election of the directors. Moreover, and as a final and conclusive answer to this objection, before the meeting of shareholders broke up, the minutes of the entire acts and proceedings of the meeting, including the election of directors—their names being given—was inscribed in the minute book of the company; and every one of the shareholders holding collectively 8519 shares, in his own proper hand writing subscribed and attested to their accuracy; and this record was produced to and shown to the court on the argument.

I, therefore, am of opinion that the claim of the plaintiff-directors to be the duly elected and legal directors of the company, is clearly made out, and that the *title* of *all* the plaintiffs to maintain this suit is *prima facie*, established beyond all question—the declaration alone of the chairman of the annual meeting of shareholders of the election of directors of the company being *prima facie* evidence of the validity of such election: *Wandsworth and Putney Gaslight and Coke Co. v Wright* 25 L. T. 404, 18 W R 728.

I have now to consider whether according to law the plaintiffs have, in evidence, made such a case against the defendants, as entitles the plaintiffs to the extraordinary interposition of this court, by way of interlocutory injunction, until the hearing of the cause.

It will be borne in mind that *Dr. Schultz*, along with *Bown, Kennedy, Murdoch, R. L. McGregor*, and *Pew*, of whom *Dr. Schultz* is the *head* and *chief*, are the *real defendants*. They all collectively, as I have already

shown, even according to their own count, held but 1,481 shares of stock—(of which 308 shares belonged to Villard and his associates in New York—leaving them, in fact, but 1,173 shares), and all this being of the class of paid and non-assessable stock, and not one single share being of the class of the 2,500 shares, on which ten per cent. had been paid, called "original stock," while there was outstanding against them, as they well knew, 8,519 shares of stock—as the bill charges and as the fact appears in evidence, fraudulently and unlawfully conspired and schemed together to deprive the shareholders holding 8,519 shares of stock in the company, of any voice in the election of directors of the company or in the control or management of its affairs, at its general annual meeting of shareholders, to be holden on the 1st February, 1882; and, as it is charged in the bill, to take the property and effects of the company into their own hands, to seize upon the corporate seal, books and records of the company, for the purpose of breaking up the company and preventing the construction of its railway, or of compelling the majority of the shareholders to buy off their opposition at large pecuniary advantages to themselves. They apparently saw there was little chance for them if their numbers were only *Schultz, Bown, Kennedy, Murdoch, R. L. McGregor* and *Pew*. Therefore to give potency to their scheme in the way of physical force, and overawe by the presentation of a plurality of numbers, and effect, if required, by violence what they could not do by voting on their shares, they, or one or more of them, only a day or two prior to the annual general meeting on the 1st February, 1882, transferred small quantities of stock to divers persons—some of whom were strangers and non-residents, and were apparently brought here in furtherance of the scheme and for no other purpose; so that *Dr. Schultz* was enabled to present the following list of shareholders, at the annual meeting, all of whom I believe were present—19 in all. I give the names of his shareholders, other than *himself, Bown, Kennedy, Murdoch, McGregor* and *Pew* his co-conspirators, with the number of shares transferred to each—the total shares transferred being in demunition of the aggregate number of shares held by the *chief conspirators*. I use the term conspirators in its primary meaning for the want of a better term to express my meaning not occurring to me—not in an odious sense.

	SHARES.
W. J. McGregor	5
Thomas J. Scoble	40
E. Elliott	5
S. Mulvey, Esq.	10
L. O. Armstrong	5
R. McLennan	40
J. H. Burns	5
F. B. Robinson	1
W. G. Dennison	5
D.H. McMillan	40
J. H. Leishman	5
R. Cartwright	5
J. Stewart	5
	171

making thirteen willing and subservient instruments, holding in all 171 shares, in the hands of the *real defendants* in this suit, to co-operate with them at the general annual meeting of the shareholders in overcoming 8519

shares or votes, with 1173 shares or votes! If all this meant nothing but a fair and orderly meeting it is passing strange. Taken in connection with the argument of counsel before the court as to valid and invalid stock for voting, I think it meant much more than that; and taken in connection with subsequent events at the general meeting of the shareholders, and subsequent thereto, disclosed in the plaintiffs bill and verified by sworn evidence, I think it meant all that is charged in the bill of complaint. I go farther; I think that *Dr. Schultz* and his party attended the general annual meeting of the shareholders convened on the 1st Feb., 1882, well knowing that they, on their own contention as to the stock on which votes could be legally cast, were in a *decisive minority*, as I have already shown, *supra;* and yet determined that they would, *by violence, if necessary,* control the election of directors, and seize upon and take possession of the company's corporate seal, its books, papers, documents, records and property, and put new directors, with *Dr. Schultz* at their head, in the control and management of the whole undertaking! But they met at that meeting thirty-two resolute shareholders, holding collectively 8519 shares of stock, determined that the action of the meeting should be governed by the *majority* of the votes of the shareholders present in person or by proxy, and gave unmistakable evidence of this determination. After some manifestations of violence and disorderly conduct on the part of *Dr. Schultz* and his party, they saw that violence, if offered, would be repelled by violence. They found that the party of the plaintiff-directors had not only the majority of shares—8519 to 1173—but also, very much to the disappointment and surprise of the *Schultz* party, had the majority of stockholders personally present—32 to 19. The *Schultz* party probably thought the majority against them too great; and that it was the better generalship to retreat - that discretion was the better part of valor—and they all in a body withdrew from the meeting, at the instance of *Dr. Schultz* to *Dr. Schultz's* private office; and there, on the same day, declared *Dr. Schultz, Bown, Kennedy, Murdoch, McGregor, McLennan, Pew, McMillan* and *Scoble* to be the duly elected directors of the company for the year ensuing from the 1st of Feb., 1882; and the pretended elected directors did, then and there, pretend to organize themselves as the board of directors of the company; and to that end they pretended to choose *Dr. Schultz*, the chief conspirator, as president, and Armstrong as secretary, and Mulvey as Treasurer of the company, and assumed to be the regularly elected directors, and as such to be clothed with all the powers of a regularly elected board of directors of the company; while in the meantime, at the office of the company at which the general meeting of shareholders was called, and at which the meeting was being held, and from which *Dr. Schultz* and his party had seceded, as I have mentioned, carrying along with them in all, 1481 shares or votes, or, if Pew's shares, of which he was the conduit pipe to Villard and his associates be deducted. 1173 shares or votes, the plaintiff-directors were regularly and duly elected, organized and formally put in possession of the property and effects, and management and control of the company, as has been already mentioned, and is described in the plaintiffs' bill of complaint.

Now as we are told a court of equity is conversant only with questions of property and the maintenance of civil rights. Injury to property, whether actual or prospective, is the foundation on which its jurisdiction rests. It has no jurisdiction in matters merely criminal or merely moral which do not affect property or the right to it." The court has no jurisdiction to restrain or prevent crime, or to enforce the performance of a moral

duty, disconnected with the rights to property; nor for putting a stop to acts, which, if permitted, would lead to a breach of the peace or worse crime. The possible effect of acts and course of procedure of one man on the reputation of another, form no ground for the interference of a court of equity, unless such acts and course of procedure be attended with an injury to property.

Now, if the defendants had stopped where we left them, although their acts and conduct were in a moral sense highly reprehensible and in a criminal sense, it may be, indictable, this court would have no jurisdiction over their acts and conduct. All will agree that their acts and conduct were at least very foolish and very absurd for an effectual good or even a bad purpose. But the defendants did not stop where we left them. They, from time to time met, as it appears, at the office of *Dr. Schultz* in Winnipeg and pretended to be the directors of the company, and as such, to take upon themselves the conduct and management of its affairs, and to issue mandates and orders to the officers, servants, workmen and employees of the company; and, amongst other things, caused to be inserted in the public newspapers of Winnipeg the following public notice, as an official document.

"PUBLIC NOTICE

"Is hereby given that the following resolution was adopted at a meeting of the DIRECTORS OF THE MANITOBA SOUTH-WESTERN COLONIZATION RAILWAY COMPANY, held at Winnipeg, February 1st, 1882:—"That all officials and servants of this company excepting L. O. Armstrong, secretary, and Stewart Mulvey, treasurer, be and are hereby dismissed from the service of the company; and that the secretary be directed to insert in the newspapers of this city an advertisement to the public that THIS COMPANY will not be responsible for any debts contracted by any person not duly authorized by this BOARD. Carried."

"All persons are therefore requested to take notice and govern themselves accordingly.

"L. O. ARMSTRONG,
"Secretary M. S. W. R'y. Co."

This public notice was followed the next day by a pretended official document emanating from the pretended directors through their pretended officers of president and secretary, to General Hammond, the *real* president of the *real* directors of the company, The document is as follows:

"THE MANITOBA SOUTH-WESTERN COLONIZATION RAILWAY COMPANY.
"JOHN SCHULTZ,
"PRESIDENT.

"Winnipeg, Manitoba 2nd February 1882.

"To General Hammond,
"Winnipeg.

"SIR,—

"I am instructed by the BOARD OF DIRECTORS OF THE MANITOBA SOUTH-WESTERN COLONIZATION RAILWAY COMPANY to inform you, as trustee and general agent of the Oregon and Transcontinental Company, that they are advised that the contract assumed to be made between the two companies above mentioned for the construction of the Manitoba South-Western Railway is *ultra vires* of the railway company, and illegal.

"I am instructed to add that this board is desirous of making with the least possible delay, a new arrangement with the Oregon and Trans-

"continental Company, whereby the latter company may be fully and equit-
"ably compensated for all work and expenditure already properly performed
"or made by them and enuring to the benefit of the railway company, and
"for the completion of the construction of the road.

"I am instructed to request you to submit this letter to the Oregon "and Transcontinental Company, with the request of the board for an early
"reply thereto.

"I am, Sir, your obedient servant,

"L. O. ARMSTRONG,

"Secretary."

These two documents are referred to in paragraph 20 of the plaintiffs' bill as Exhibits C and D, and their object and intent set forth with accuracy. The 20th paragraph concludes as follows: "the defendants further "give out and threaten that they will wrongfully seize upon the corres-
"pondence of the said railway company, passing through the public mails;
"and to enable them so to seize such correspondence, the said Schultz, falsely
"pretending to act as president of said railway company, shortly prior to
"the exhibition of this bill, being instigated thereto, by the other defen-
"dants aforesaid, procured a box in the public post office at the said city of
"Winnipeg, over which he would have complete control, and to which he
"would have access at his pleasure; and he instructed the postmaster in
"charge of such office or his deputies or clerks, to place in such box all
"correspondence and other mail matter arriving at such office for the said
"railway company; and the defendants give out and threaten that they
"will forcibly seize upon the general office building, and upon the books,
"papers and seal of the said railway company, and will deprive the lawfully
"constituted directors and officers of the said company of the possession and
"custody of the said building, books, papers and the said seal."

These allegations of facts were not pretended to be denied by affidavit, or on the argument, by counsel.

I must be excused for transcribing paragraph 21 and 22 of the plaintiffs' bill.

"(21). If the Oregon and Transcontinental Company be not hindered in
"the prosecution of the work of constructing the said line of railway in
"accordance with said arrangement and contract for the construction thereof,
"and the business operations of the said railway company be not interferred
"with by the defendants, in the manner threatened by them as aforesaid,
"and the plaintiffs, who are the lawfully constituted directors and officers
"of the said railway company, be not deprived of, or obstructed in, the
"proper conduct of the affairs of such corporation, the said line of railway
"can and will be constructed and completed in the time and manner pre-
"scribed by the Acts of Parliament, and of the said order in Council; but
"in case any hindrances or obstructions be interposed to the prosecution of
"such works or to the management of the concerns of the said company by
"the said lawfully constituted directors or officers thereof, as threatened by
"the defendants, the completion of any considerable portion of the said line
"of railway will be wholly prevented."

"(22) By reason of the premises, the plaintiffs will be driven to a great
"multiplicity of actions to defend their rights in the said corporation and
"in its books, property and effects, and will be without any adequate
"remedy at law whatever."

The allegations in these two paragraphs are rather inferences of facts than the direct assertion of facts, and in the substance of them I most fully concur.

We now see clearly that the acts and conduct of the defendants acting unitedly as directors and officers of a company, when they have no right or title thereto, as has been shown, professing to deal with, and professing to have a right to deal with, the affairs of that company to the exclusion of the lawfully constituted directors and officers of that company, is quite a different matter from the *farce* of themselves electing themselves on a *small fraction of stock* directors, and then organizing,—appointing one president and another secretary, and another treasurer. Children might engage in the *same farce* for pastime: but when these self-constituted directors and their pretended officers by their direction, begin actively to assume the control and management of the affairs of a great company—give public notice dismissing all officers and servants of the company—send a dictorial letter to the lawfully constituted president of the lawful board of directors of the company, demanding serious charges in the policy and terms of construction of a great line of railway—order the correspondence and mail matter addressed to the company to be put by the officers of the post office in a drawer or box to which they alone had the outside key, and access—dispatch a pretended official communication to the Farmer's Loan and Trust Co. of New York, the trustee named in the bonds, not to deliver over the bonds (which came to the knowledge of the plaintiffs' after bill filed, but was admitted on the argument)—the threatening to seize the common seal, office buildings, books, records, property and effects of the company and take forcible possession thereof, &c., &c.,—that which was a laughing farce at the initiation has eventuated in a most serious tragedy.

There has already been most serious injury to the property and civil rights of the plaintiffs, and greater in the same direction are threatened, and must, if the defendants be permitted to go on in their present course of conduct, ensue in the future, for which there is no adequate remedy at law, and loudly demand the interposition of the restraining power of this court by injunction. The injury already done and threatened by a *fraction of a factious minority* of the shareholders is irreparable. The plaintiffs invoke the protecting power of the court. In my opinion, on every conceivable ground, they are entitled to it. Were the court to refuse assistance in such a case as is made before the court in this cause, it would in effect be, in the case of corporative associated commercial enterprise, to relegate the lawful action of majorities to the illegal faction of minorities, and to create distrust in joint stock undertakings, and work the final destruction and overthrow of the confederated enterprises of the world.

The order for an interlocutory injunction upon the defendants restraining &c., until the hearing of this cause and further order of this court I think should be granted.

MR. JUSTICE DUBUC.—I concur in the judgment of the chief justice.

MR. JUSTICE MILLER.—I agree in the conclusion at which the chief justice has arrived, except that I do not think the shareholders, *George H. Adams, Artemas H. Holmes, Thomas F. Oakes* and *Anthony J. Thomas* are *necessary* or *permissible* parties-plaintiff in a suit of this kind. I see that the chief justice doubts that they are permisible parties. Their names, with no expense to either party, may be struck out at the hearing of the cause. Their presence, however, makes no difference on this motion. I think the order for injunction should go.

By the Court.—Order accordingly.